















Digitized by the Internet Archive  
in 2013

<http://archive.org/details/constitutionalco10mary>





Sickles -  
H-209

Maryland Room  
University of Maryland Library  
College Park, Md.

3808

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

CONSTITUTIONAL CONVENTION  
OF THE  
STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol  
Annapolis, Maryland

November 17, 1967 - 10 a.m.

HONORABLE H. VERNON ENEY,  
PRESIDENT

Maryland Room  
University of Maryland Library  
College Park, Md.

Reported by:  
C. J. Hunt and  
W. P. Banister





P R O C E E D I N G S

1  
2 THE PRESIDENT: The Sergeant at Arms will clear  
3 the aisles and close the doors. The Convention will  
4 please come to order.

5 The invocation today will be offered by the  
6 Reverend Marion C. Bascom of Douglas Memorial Church in  
7 Baltimore City. Reverend Bascom is the Pastor of Delegate  
8 Rubye Gill. Reverend Bascom.

9 REVEREND BASCOM: O thou nameless being by whom  
10 we call the fondest names invented by human lips, in  
11 esteem or in feebleness we would approach this moment, not  
12 because of our wisdom or our knowledge, but because we  
13 are caught up in a moment in time and in history. May our  
14 prayers not be perfunctory, but may out of the deep sense of  
15 need we lift our spirit and our minds for the scrutiny  
16 of that which is universal and that which is good. May  
17 we go beyond our conventional wisdom and may we determine to  
18 discover what is on your mind for us to do. In most cases,  
19 our Father, we are so busily engaged in telling you what  
20 is on our minds, but may this Convention try to discover  
21 what is on your mind for it to do.





1           May we be reminded that we are surrounded by  
2 history; that a myriad crowd of witnesses who have preceded  
3 us in some measure look to see that our hands are feeble  
4 but hopefully that our hearts will be strong. May  
5 we recognize that we face awesome responsibilities. May we  
6 not be caught playing with trivia, while large assignments  
7 loom ominously around us.

8           Grant this Convention wisdom to see, but a  
9 mighty courage to be and to do, and if this does not  
10 pervade the deep recesses of our spirits; stab us fiercely  
11 and remind us that generations unborn are standing awaiting  
12 our mature judgment on matters that will affect them;  
13 may no unborn child be denied any of our resources, the  
14 positive, the mature resources, but may we give to  
15 generations unborn a Constitution, a state, a nation,  
16 where we will beat our swords into plowshares, and our  
17 spears into pruning hooks, and study war never again.

18           Now whatever we have failed to ask, it is because  
19 of the feebleness of our minds and our bodies and our  
20 spirits, but take the tattered fragments of what we are  
21 and weave it into what it ought to be. Let the words of





1 my mouth and the meditation my heart be acceptable in  
2 thy sight, Oh, Lord, my Rock and my Redeemer. Amen.

3 THE PRESIDENT: Thank you.

4 Roll call.

5 (Whereupon, a roll call was taken.)

6 THE PRESIDENT: Have all delegates answered  
7 roll call? The Clerk will record the roll call.

8 A quorum being present, the Convention is in  
9 session. The Chair recognizes Delegate Powers, Chairman  
10 of the Committee on Calendar and Agenda.

11 DELEGATE POWERS: Mr. President, I move  
12 adoption of today's calendar.

13 (The motion was duly seconded.)

14 THE PRESIDENT: All in favor, signify by saying  
15 Aye; contrary, No. The Ayes have it. The motion is  
16 carried. The calendar is adopted.

17 THE PRESIDENT: Committee Recommendation R&P-1  
18 was filed several days ago. You have a printed copy.  
19 There is distributed today the supporting memorandum,  
20 Committee Recommendation R&P-1, which is 31 pages, to  
21 which is attached Appendix A, Appendix C, nice comfortable



1 reading for the weekend.

2 I think all have been printed with the  
3 exception of Appendix C, and that will be printed and  
4 available for you to take with you before the day is  
5 over.

6 Today is the last day for the filing of final  
7 committee reports. I think all of the committees are  
8 ready to file their final reports.

9 I have requested some of the committees to  
10 withhold the filing of their reports today simply because  
11 the pressure of completing the reports has been such, and  
12 I think a day or two more would help polish the language  
13 and make amendment on the floor unnecessary. At the proper  
14 time I will request the House to extend the time for the  
15 filing of those reports.

16 In addition, there are a number of loose ends  
17 with various committees and I have suggested that the  
18 committees get in the principal parts of their reports  
19 today, leaving the loose ends to be picked up in a supple-  
20 mental report. These are primarily reports as to specific  
21 proposals. At the proper time, I will ask the Assembly





1 to permit the filing of those supplemental reports.

2 Are there any motions?

3 These reports will not be read across the  
4 desk this morning. They will be read across immediately  
5 after the noon recess. Are there any motions or resolutions?

6 (There was no response.)

7 THE PRESIDENT: If not, the Chair recognizes  
8 Delegate Powers.

9 DELEGATE POWERS: Mr. President, I move the  
10 Convention resolve itself into the Committee of the  
11 Whole for the purpose of resuming consideration of  
12 Committee Recommendation No. JB-1.

13 THE PRESIDENT: Second?

14 (Whereupon, the motion was duly seconded.)

15 THE PRESIDENT: All in favor, signify by saying  
16 Aye; contrary, no. The ayes have it, so ordered.

17 (Whereupon, at 10:13 a.m., the Convention  
18 resolved itself into the Committee of the Whole.)

19 (The mace was removed by the Sergeant at Arms.)

20 THE CHAIRMAN: The Committee of the Whole will  
21 please come to order.





1           We have under consideration Committee Recommenda-  
2           tion JB-1 under Debate Schedule 4. Under consideration  
3           at the time of recess last evening was Section 5.11.  
4           We will return to a consideration of that section. It is  
5           still subject to amendment. The Chair has four more  
6           amendments to present.

7           Delegate Macdonald, you have an amendment that  
8           you desire to offer?

9           DELEGATE MACDONALD: I do, Mr. Chairman.

10          THE CHAIRMAN: Very well. The Page will  
11          distribute the amendment, BI. Please mark this  
12          Amendment 15. The Clerk will read the amendment.

13          MR. QUILLEN: Amendment No. 15 to Committee  
14          Recommendation No. JB-1, by Delegate Macdonald. On Page  
15          4, Section 5.11, Commissioners in Lines 3 and 4, strike  
16          out the following ", and then only as prescribed by rule".

17          THE CHAIRMAN: The amendment having been seconded,  
18          the Chair recognizes Delegate Macdonald to speak to the  
19          amendment.

20          DELEGATE MACDONALD: Mr. Chairman, fellow  
21          delegates, first I wish to emphasize what this amendment



1 will not do.

2 It will leave intact the appointment of the  
3 Commissioners. It will leave intact the subject matter  
4 area in which they may act.

5 Now as to what it will do.

6 The amendment proposes to strike from Page 4  
7 the words on Lines 3 and 4, and then only as prescribed  
8 by rule.

9 This would mean that the manner in which the  
10 authority of the Commissioners to issue warrants of arrest,  
11 prescribe bail, collateral and decide whether a person  
12 should be incarcerated pending hearing or not, the manner  
13 in which those things could be done could be determined  
14 either by rule enacted by the, or adopted, rather, by the  
15 Court of Appeals with its rule-making authority, or by  
16 the General Assembly by law.

17 Referring your attention again to Rule 5.31, or  
18 rather, Section 5.31 of this Article, you will see that  
19 as to practice and procedure in the courts for the most  
20 part, the rule-making authority of the Court of Appeals  
21 is shared concurrently with the General Assembly; either





1 the General Assembly or the Court of Appeals may enact  
2 the rule. The concurrent power prevails. This may go  
3 on in an endless chain but as already pointed out, this  
4 current system has worked remarkably well. The present  
5 rules of procedure which are in effect in the State of Mary-  
6 land were adopted under this concurrent power system.  
7 They are an excellent set of rules. Very seldom is there  
8 a clash between the General Assembly and the Court of  
9 Appeals. When there is, they work it out to the mutual  
10 satisfaction of everyone.

11 Now, there are so many less important matters  
12 of practice and procedure that are subject to the  
13 concurrent rule system.

14 For instance, the form of action which must  
15 be brought in the court, the form and content of the  
16 pleadings, in what county suit must be brought, the  
17 procedures for pre-trial discovery, the procedural rules  
18 for the conduct of the trial, motions which may be made  
19 during trial and after trial, who must sign the bill of  
20 complaint -- all of these matters are subject to the  
21 concurrent rule of the General Assembly and the Court of





1 Appeals.

2 When it comes down to matters such as the  
3 issuance of warrants of arrest, bail, collateral, and  
4 incarceration pending a hearing, we may be dealing in an  
5 area which is strictly procedural; in other words, in  
6 which the Court of Appeals and the General Assembly should  
7 have concurrent power, or we may be dealing in an area  
8 which is a matter of substance. Certainly if a man is  
9 arrested and he is held in jail for 12, 15, and 20, or  
10 more hours, or even for three or four hours before hearing,  
11 I think he would think that that is substantive.

12 Now until these rules are promulgated with  
13 regard to warrant, issuance of warrants of arrest, bail,  
14 et cetera, we really can't tell whether they are substan-  
15 tive or procedural. If they are substantive, or to the  
16 extent that they are substantive, then they should be  
17 left exclusively to the General Assembly, and the Court of  
18 Appeals should have no authority to act in that respect  
19 whatsoever, but we all agree that the legislative body  
20 is the General Assembly and that the Court of Appeals can  
21 pass rules on practice and procedure only.



1           So the effect of my amendment would be to  
2 eliminate the confinement that this must be done and  
3 can be done only by the Court of Appeals. It would allow  
4 either the General Assembly or the Court of Appeals to  
5 adopt rules and regulations on the subject, and since it  
6 gets mighty close to the substantive, as a matter of  
7 fact, it can be quite substantive, depending upon how the  
8 rule is written, we should leave it flexible so that  
9 either the General Assembly or the Court of Appeals could  
10 adopt appropriate rule on the subject.

11           THE CHAIRMAN: Delegate Mudd.

12           DELEGATE MUDD: Mr. Chairman, ladies and  
13 gentlemen of the committee, I am forced to rise in opposi-  
14 tion to the amendment and explain that it is contrary to  
15 the view of the majority in submitting the report which  
16 you now have before you for consideration.

17           Delegate Macdonald has pointed out rather  
18 clearly the difference between his view by virtue of this  
19 amendment and the view of the majority concurring in the  
20 report now before you for consideration.

21           It is our view, which we hope you will adopt,





1 that the substance of what the commissioners are authorized  
2 to do is contained in our report, namely, the commissioners  
3 may exercise powers only with respect to warrants of  
4 arrest, bail, collateral and incarceration pending hearing.  
5 The words Delegate Macdonald proposes to delete by his  
6 amendment are these.

7 And then only as prescribed by rule.

8 In our view, there is no necessity for concurrent  
9 authority in the legislature with respect to the exercise  
10 of these substantive powers by the commissioners. In our  
11 view, it is purely in the area of practice and procedure  
12 governing the exercise of these powers prescribed for the  
13 commissioners in our recommendation. Accordingly, we  
14 have advisedly included in our recommendation the provision  
15 that the exercise of these powers shall be only by rule,  
16 consistent with our over-all recommendation that in matters  
17 of practice and procedure, in housekeeping, if you please,  
18 that the operations of these commissioners as appointees  
19 of the district judge will be controlled by rule.

20 We therefore ask you to vote against this  
21 amendment.



1 THE CHAIRMAN: Any delegate desire to speak in  
2 favor of the amendment? Delegate Willoner?

3 DELEGATE WILLONER: Mr. Chairman, once again  
4 we are confronted with the problem we were confronted  
5 with several times before and I would like to say again  
6 it isn't a matter that would in fact be something the  
7 Legislature would be interested in but it is again a  
8 matter of principle and I would just like to restate that  
9 proposition.

10 THE CHAIRMAN: Any other delegate desire to  
11 speak in opposition to the amendment? Are you ready  
12 for the question? Delegate Marion.

13 DELEGATE MARION: Mr. Chairman, my view of this  
14 may not be correct, but, as I see it, there is a  
15 distinction between what this amendment would propose to  
16 do here and what Delegate Macdonald has achieved by  
17 Amendment 6 and 12, where he has inserted the words  
18 "law or" before the word "rule" in prior recommended  
19 sections of our report.

20 This is not the granting of a power so much to  
21 the court by rule as giving the court by rule the power of





1 limiting the power of commissioners. What he would ask  
2 be done here by deleting all of these words is to remove  
3 from this section the authority to limit the power of  
4 commissioners as granted by the Constitution, or to spell  
5 out how those powers might be exercised by these  
6 commissioners.

7 It would seem to me that to achieve the purpose  
8 which he advanced in detailing his reasoning for offering  
9 this amendment, it would be more consistent were he to have  
10 followed the language that he had asked be inserted in  
11 prior amendments rather than remove the limitation of  
12 the entire clause at the end of this section. I would  
13 urge the defeat of the amendment.

14 THE CHAIRMAN: Are you ready for the question?  
15 The question arises on the adoption of Amendment No. 15.  
16 A vote Aye is a vote in favor of the amendment, a vote  
17 No is a vote against. Cast your vote

18 (Whereupon, a roll call vote was taken.)

19 THE CHAIRMAN: Has every delegate voted?  
20 Does any delegate desire to change his vote? The Clerk  
21 will record the vote.



1           There being 31 votes in the affirmative and  
2           81 in the negative, the motion fails. The amendment is  
3           rejected.

4           The Page will please distribute amendment BD.  
5           Please mark this amendment 16. Please also add to the  
6           sponsoring delegate the name of Delegate Dukes. The  
7           amendment is sponsored by Delegates Bothe and Dukes,  
8           Amendment 16. The Clerk will read the amendment.

9           MR. QUILLEN: Amendment No. 16 to Committee  
10          Recommendation No. JB-1, by Delegates Bothe and Dukes.  
11          On Page 4, Section 5.11, titled Commissioners, in Lines  
12          2 and 3, strike out the words "collateral and" and insert in  
13          lieu thereof the following: "terms of pre-trial release  
14          or".

15          THE CHAIRMAN: The amendment having been  
16          seconded, the Chair recognizes Delegate Bothe to speak to  
17          the amendment.

18          DELEGATE BOTHE: Mr. Chairman, fellow delegates,  
19          the purpose of this amendment is two fold.

20          Firstly, to make clear that the power of the  
21          Commissioners will extend to authority to release people





1 on their own recognizance, or on terms other than money,  
2 bail, or collateral, as well as to make the provisions of  
3 Section 5.11 consonant with a proposal or recommendation  
4 to be submitted to you by the Committee on Personal Rights  
5 and the Preamble, which would grant a right of pre-trial  
6 release, conditioned only upon such terms as are necessary  
7 to secure the appearance of the accused before the Court.

8 I understand that Delegate Mudd was asked a  
9 question as to whether the provisions of Section 5.11 and  
10 the use of the word "bail" would permit the commissioners  
11 to release people on terms other than money bail, and that  
12 it was his opinion and that of the committee that the  
13 word would suffice. However, I am concerned that it will  
14 not do so, and in any event feel that the substituted  
15 words will suitably fit the power which is intended to be  
16 conferred.

17 My concern over whether the word "bail" will  
18 suffice is apparently shared by the General Assembly of  
19 Maryland because in the 1965 session it was found  
20 advisable, if not necessary, to specifically grant to the  
21 courts the authority to release Defendants on their own



1     recognizance, and, of course, these courts have had the  
2     power to fix money bail. That is Article 27, Section 638-A,  
3     passed in the 1965 session and it is my understanding  
4     that the Legislative Council will recommend to the next  
5     session of the General Assembly a legislation implementing  
6     the right of an accused to pre-trial release, so that the  
7     change suggested by this amendment would, I think, very  
8     adequately in no larger number of words cover the  
9     situation. Instead of the word "bail," we would use the  
10    words, "terms of pre-trial release," which would encompass  
11    not only the posting of money bail through a professional  
12    bondsman, but also the release of the accused on his own  
13    recognizance or under such other terms as the Commissioner  
14    may find are reasonably necessary to secure his  
15    appearance before the court.





1 I am sure this committee shares with me the  
2 concern that people will be physically incarcerated in  
3 lieu of the money bail, and I understand further that  
4 there are many parts of this State in which the services  
5 of a professional bail bondsman are not readily available,  
6 even where the accused has the wherewithall to pay for  
7 cash bail.

8 For those reasons, I strongly suggest that the  
9 amendment be adopted and that the word "bail" be eliminated  
10 from the powers of the commissioners; but instead, that  
11 they be given the broader power to set terms of pre-  
12 trial release any time reasonably calculated to secure  
13 the presence of the accused before the court, as required.

14 THE CHAIRMAN: Delegate Bothe, the Chair is  
15 uncertain. Are you suggesting that your amendment be modified  
16 so that it reads, "strike out the words 'bail, collateral'..."

17 DELEGATE BOTHE: May I read the wording as  
18 it would be if the amendment is adopted?

19 THE CHAIRMAN: Yes.

20 DELEGATE BOTHE: Commissioners may exercise power  
21 only with respect to warrants of arrest, terms of



1 pretrial release, or incarceration pending hearing, and  
2 then only as prescribed by rule.

3 THE CHAIRMAN. Then the printed motion should  
4 be modified in line 2, to strike out, in addition to the  
5 words "collateral" and "bail," which were inserted by modi-  
6 fication of the committee recommendation.

7 Is there any objection to the modification  
8 of the amendment by interlineation?

9 The Chair hears none.

10 Will you please modify in line 2, before the  
11 word "collateral" and after the quotation mark, insert  
12 the word "bail,".

13 The Chair recognizes Delegate Mudd.

14 In other words, the effect of the amendment  
15 is to strike out the words "bail, collateral and", and  
16 to substitute the language indicated in lines 4 and 5.

17 Delegate Mudd.

18 DELEGATE MUDD: Mr. Chairman, Delegate Bothe  
19 has correctly stated the intent and the purpose of the  
20 majority report in this regard, and I did indicate at  
21 some point I believe, in answer to a question, that we





1 proposed to be implicit in the language of our  
2 recommendation that the Commissioners do have the power  
3 with respect to terms of pretrial release. In fact, the  
4 word "bail" we thought carried such authority. However,  
5 I have not had a chance to check this with all members  
6 of my committee, but it is my disposition to concur in the  
7 amendment by making the language explicit in the manner  
8 we intended, and I do so concur on behalf of the committee,  
9 unless some member wishes to rise in opposition.

10 THE CHAIRMAN: Does any member of the committee  
11 wish to speak in opposition to the amendment?

12 Delegate Marvin Smith.

13 DELEGATE M. SMITH: Mr. Chairman, us lawyers  
14 on the back row have been sitting back here talking, and  
15 we were a little bit concerned about the striking out  
16 of the words "bail" and "collateral," and I wonder if the  
17 lady would accept an amendment that would, instead of  
18 striking out the words "bail" or collateral," would in  
19 lieu thereof accept an insertion that would read "and  
20 the other terms of pre-trial release."

21 DELEGATE JAMES: Or terms of pre-trial release.



1 THE CHAIRMAN: Do you mean the word "and"  
2 or the word "or"?

3 DELEGATE M. SMITH: "Or." We were concerned,  
4 Mr. Chairman, about the word "collateral." There was a  
5 feeling that it was possible that it might have a conno-  
6 tation of other than pretrial release.

7 THE CHAIRMAN: You think there is doubt as to  
8 whether the expression, "terms of pre-trial release,"  
9 encompass bail and collateral, or collateral?

10 DELEGATE M. SMITH: Mr. Chairman, we weren't  
11 sure, and as Judge Knox used to say, out of an abundance  
12 of caution we thought it better to make an amendment.

13 THE CHAIRMAN: Delegate Bothe, the suggestion  
14 is made that in lieu of striking the words "bail, collateral  
15 and," we leave those words in, and add to your addition  
16 the words, before the word "terms," "or other," so the  
17 whole sentence would read, "Commissioners may exercise  
18 powers only with respect to warrants of arrest, bail,  
19 collateral, or other terms of pre-trial release, or  
20 incarceration pending hearing, and then only as prescribed  
21 by rule."



1 Delegate Bothe.

2 DELEGATE BOTHE: May I ask Delegate Smith  
3 whether his concern is only as to collateral, or whether  
4 he feels that the words, "terms of pre-trial release,"  
5 could also cover cash or money bail?

6 THE CHAIRMAN: Delegate Smith.

7 DELEGATE M. SMITH: It would be my conception  
8 that it should cover certainly bail. My real concern is  
9 with the collateral.

10 THE CHAIRMAN: Delegate Bothe.

11 DELEGATE BOTHE: Might I suggest that we strike  
12 the word "bail," but leave in the word "collateral"?

13 THE CHAIRMAN: Delegate Smith.

14 DELEGATE M. SMITH: That would be accpetable  
15 to us, I am sure.

16 DELEGATE BOTHE: That would be acceptable.

17 THE CHAIRMAN: In the absence of objection,  
18 the amendment would be modified again to, in line 2, strike  
19 the word "bail," leave in the word "collateral," strike  
20 the word "and," and insert the words "or other terms of  
21 pre-trial release or".





1 Is this the amendment, Delegate Bothe?

2 DELEGATE BOTHE: Yes, that is correct.

3 THE CHAIRMAN: Is there any objection to the  
4 modification? Is it accepted by the seconder?

5 DELEGATE MORGAN: Yes, sir.

6 THE CHAIRMAN: Delegate Burdette.

7 DELEGATE BURDETTE: Mr. Chairman, be-  
8 fore we get lost here, you have, "pre-trial release or  
9 incarceration." The problem of language there is we  
10 don't know whether it is release or incarceration, whether  
11 that is the same thing. Obviously they are not. You have  
12 to go then to the dictionary to tell that.

13 THE CHAIRMAN: I would suggest, Delegate Burdette,  
14 that that is undoubtedly the kind of problem that the  
15 Committee on Style could resolve without any difficulty.

16 DELEGATE BURDETTE: You want to use the word "pre-  
17 trial release or incarceration pending hearing."

18 THE CHAIRMAN: I think the intention is to con-  
19 trast release and incarceration. Is that correct, Delegate  
20 Bothe?

21 DELEGATE BOTHE: That is.



1 THE CHAIRMAN: The Chair will restate --  
2 Delegate Chabot, let me restate the amendment, first.

3 The amendment as modified, as the Chair under-  
4 stands it, will read as follows: On page 4, section 5.11,  
5 Commissioners, in line 2 strike out the word "bail,"  
6 in line 3 strike out the word "and" before the word "incar-  
7 ceration", and insert in lieu thereof the words "or  
8 other terms of pretrial release or."

9 Delegate Chabot.

10 DELEGATE CHABOT: Would Delegate Bothe yield  
11 for a question?

12 THE CHAIRMAN: Delegate Bothe, do you yield?

13 DELEGATE BOTHE: Yes, I do.

14 THE CHAIRMAN: Delegate Chabot.

15 DELEGATE CHABOT: I take it that hearing is a  
16 word which is broader than trial. It includes trials and  
17 perhaps other things, and I wonder then if we are creating  
18 some potential confusion if we have the word pre-trial in  
19 there.

20 Our effort, as I believe the Chair properly  
21 stated, was to contrast release and incarceration, and  
to intend to include thereby all the different things that





1 can occur to a person prior to a hearing, which may be a  
2 trial or which may be something other than a trial; and  
3 I wonder if we cannot achieve that purpose by doing what we  
4 said thus far, except by leaving out the word pre-trial.

5 THE CHAIRMAN: Leaving out the word what?

6 DELEGATE CHABOT: Pre-trial.

7 THE CHAIRMAN: Delegate Bothe.

8 DELEGATE BOTHE: Delegate Chabot, certainly  
9 that would completely run counter to the whole meaning of  
10 the phrase.

11 THE CHAIRMAN: Delegate Bothe, may the Chair  
12 interrupt? I think Delegate Chabot is suggesting that  
13 the words "pending hearing following incarceration" serve  
14 the same purpose as your words "pre-trial." In other  
15 words, that phrase would be "terms of release or incarceration  
16 pending hearing," to mean terms of release pending  
17 hearing, or terms of incarceration pending hearing. Is  
18 that your point, Delegate Chabot?

19 DELEGATE CHABOT: Yes, sir.

20 THE CHAIRMAN: He doesn't seek to change the  
21 meaning. He suggests it is already there.



1 DELEGATE BOTHE: I understand it now, and per-  
2 haps that would be a better way of expressing it.

3 THE CHAIRMAN: I think your idea is the con-  
4 trast of release and incarceration. It makes it more  
5 effective.

6 DELEGATE BOTHE: I would like to read the whole  
7 matter as it would appear if we adopt Delegate Chabot's  
8 suggestion.

9 THE CHAIRMAN: As the Chair understands, the  
10 sentence would then read, "Commissioners may exercise  
11 powers only with respect to warrants of arrest, collateral  
12 or other terms of release or incarceration pending hearing,  
13 and then only as prescribed by rule."

14 DELEGATE BOTHE: That gives me a little  
15 difficulty, Mr. Chairman.

16 THE CHAIRMAN: May the Chair suggest that the  
17 record shows clearly what is intended, and the Committee  
18 on Style could wrestle with the question of whether the  
19 word is necessary.

20 DELEGATE BOTHE: I would be happy to sit down  
21 with the Committee on Style and work out the meaning



1 as the intention is expressed.

2 THE CHAIRMAN: For the record, as the Chair  
3 understands it, the movers intend that the phrase, "terms  
4 of release or incarceration pending hearing," or "terms of  
5 pre-trial release or incarceration pending hearing," means  
6 terms of release pending hearing or terms of incarceration  
7 pending hearing.

8 Is there any further discussion?

9 Delegate Mudd.

10 DELEGATE MUDD: Mr. Chairman, might not the  
11 Committee on Style and Drafting also consider whether  
12 by striking "bail and leaving in "collateral"  
13 that perhaps some restriction is intended there?

14 THE CHAIRMAN: I don't understand what you  
15 mean by some restriction.

16 DELEGATE MUDD: Well, by spelling out collateral  
17 is one thing they can do, but not including bail by  
18 specifying collateral.

19 THE CHAIRMAN: For the record, if I understand  
20 you, the Chair understands that the word "bail" is  
21 stricken only on the assumption that it is embraced within





1 the term "terms of release," and if there is any  
2 question about it you want still to report to the Conven-  
3 tion?

4 DELEGATE MUDD: That is correct.

5 THE CHAIRMAN: Is there any further discussion?  
6 Are you ready for the question? The question arises on the  
7 adoption of Amendment 16, as modified. A vote Aye is a  
8 vote in favor of the adoption of the amendment as modified.  
9 A vote No is a vote against. Cast your votes.

10 Has every delegate voted? Does any delegate  
11 desire to change his vote? The Clerk will record the vote.

12 There being 112 votes in the affirmative and  
13 none in the negative, the motion is carried. The amend-  
14 ment is adopted.

15 Delegate Johnson, do you desire to offer  
16 your amendment AY? I should say the Chair feels that  
17 it would not be in order, that it is covered by Amendments  
18 13 and 14, both of which were rejected.

19 DELEGATE JOHNSON: I believe that is the case,  
20 Mr. Chairman.

21 THE CHAIRMAN: All right.



1 Are there any other amendments to section 5.11?  
2 Delegate Chabot?

3 DELEGATE CHABOT: I call up Amendment BK.

4 THE CHAIRMAN: The page will please distribute  
5 Amendment BK.

6 This will be Amendment No. 17. The Clerk will  
7 read the amendment.

8 MR. QUILLEN: Amendment No. 17 to Committee  
9 Recommendation No. JB-1, by Delegate Chabot.

10 On page 4, Section 5.11, Commissioners, in  
11 line 4 following the period, add the sentence:

12 "No commissioner may issue a warrant of arrest  
13 unless he is a member of the Bar of the State."

14 THE CHAIRMAN: Is the amendment seconded?

15 (Whereupon the amendment was seconded.)

16 DELEGATE BENNETT: Second.

17 THE CHAIRMAN: Delegate Bennett seconded the  
18 amendment.

19 The Chair recognizes Delegate Chabot to speak  
20 to the amendment.

21 DELEGATE CHABOT: Mr. Chairman, yesterday we





1 dealt with the question of whether Commissioners should be  
2 authorized by rule to issue search warrants and the majority  
3 of this body, I might say the overwhelming majority, came  
4 to the conclusion that we would not want commissioners who  
5 may be non-lawyers to be able to authorize anyone to search  
6 through the personal effects of any person, any individual.

7 I think that it was clearly stated by Delegate Carson,  
8 as well as by others, that certainly if we have this  
9 high regard for the papers and effects of people, we ought  
10 to have at least as high regard for their own liberty.

11 As a practical matter, arrest records can  
12 mark a person through life, whether the arrest was a proper  
13 one or not.

14 We have had many instances brought to the atten-  
15 tion of the public in the newspapers in recent years, and  
16 especially in recent months, of the frequent effect of the  
17 practice of making public to anyone who requests it the  
18 arrest records of any person who has applied for a job.

19 In these matters the question of whether the  
20 person was ultimately acquitted or convicted, or what  
21 finally happened as a result of the arrest, often turns



1 out to be irrelevant. If you have an arrest record, you  
2 find it difficult to get a job. You find it difficult  
3 to attain other positions.

4 I suggest that although requiring that an arrest  
5 warrant be issued only by an attorney is not an absolute  
6 safeguard -- we have seen the tremendous amount of liti-  
7 gation that has gone through all the courts, including the  
8 Supreme Court, with regard to warrants issued even by  
9 judges -- nevertheless, I think that it is a basic minimal  
10 requirement that we must set in the Constitution that a  
11 non-lawyer, no matter how well supervised by the judge  
12 who appointed him, should not be permitted to issue an  
13 arrest warrant.

14 THE CHAIRMAN: Delegate Mudd.

15 DELEGATE MUDD: Mr. Chairman and ladies  
16 and gentlemen of the committee. May I say that our  
17 committee is entirely sympathetic with the views expressed  
18 by Delegate Chabot and the spirit that prompted his  
19 amendment here before us.

20 We feel that this is a responsible duty that is  
21 proposed to be assigned to these commissioners. However,



1 this matter was considered at some length in the committee,  
2 and our problem, Delegate Chabot and ladies and gentle-  
3 men of the Committee, is that as sympathetic as we are with  
4 the rights you propose to be protected by lawyers, that we  
5 feel in the rural areas where manpower, particularly in  
6 the trade of the law, is at a premium, that such require-  
7 ment would seriously cripple and hamper the operation of  
8 the commissioner system as we envision it.

9 We do feel that, having adopted the idea that  
10 these commissioners be appointed by the district judge  
11 and therefore the selection being made by someone trained  
12 in the law, that that throws a safeguard around the situa-  
13 tion as much as we could hope to accomplish within the pre-  
14 sent court structure throughout the State of Maryland.

15 We envision these commissioners to be trained  
16 to some extent in the legal procedures, and that duly  
17 will devolve upon the district judge. As a matter of fact,  
18 we understand there is already in perhaps Montgomery County  
19 a system of training and instruction for those who are  
20 operating in the committee magistrate field and that such  
21 a program inaugurated by the administrative judge or the





1 appointive judge could provide safeguards with which  
2 you are concerned, but to require that only lawyers  
3 be permitted to issue warrants as commissioners would  
4 seriously cripple the efficiency of the operation, particularly  
5 in the rural areas, and we must therefore oppose the  
6 amendment.

7 THE CHAIRMAN: Delegate Weidemeyer.

8 DELEGATE WEIDEMEYER. Mr. President, I direct  
9 this question to Delegate Chabot.

10 THE CHAIRMAN: Does Delegate Chabot yield to  
11 a question?

12 DELEGATE CHABOT: Certainly.

13 THE CHAIRMAN: Delegate Weidemeyer.

14 DELEGATE WEIDEMEYER: I would ask if he would  
15 accept an amendment to his amendment, that after the word  
16 "a", in line 5 of his amendment, strike out "member of  
17 the bar of the state," and insert in lieu thereof, "graduate  
18 of a school which furnishes a course of study for one  
19 month for commissioners as prescribed by rule."

20 THE CHAIRMAN: Delegate Chabot?

21 DELEGATE CHABOT: No, sir.



1 THE CHAIRMAN: Does any other delegate desire  
2 to speak in favor of the amendment?

3 Does any delegate desire to speak in opposition?  
4 Delegate Harry Taylor?

5 DELEGATE H. TAYLOR: Mr. Chairman, ladies and  
6 gentlemen of the Convention, I would like to speak in oppo-  
7 sition to this motion and in doing so, speak for just  
8 a second on consensus, extra-sensory perception and perhaps  
9 functional division.

10 Delegate Bard says bhat in every deliberate  
11 assembly there comes at some time a consensus.

12 Now, how do we detect this consensus? Can we do  
13 it by extra-sensory perception? Are there some of us  
14 so sensitive that we can know when everybody has made up  
15 their mind?

16 I am not endowed with that gift, but I found  
17 in the Back row here of the Convention some evidence of  
18 the way I think I detect a consensus. When the delegates  
19 begin to beat their heads on the desk, and to scream  
20 "Question, question," I begin to feel maybe that the  
21 collective judgment of the Convention has been reached,





1 and that further debate on the point is indeed futile.

2 Now, none of us want to waste our breath because  
3 indeed, some day each of us will be gasping for it, and  
4 it has been significant to me that those here in the  
5 chamber who know the most, and who are most experienced  
6 in the art of government, both by experience as well as study,  
7 are those who have spoken the least up to this time.

8 (Applause)

9 Now, I go to functional division, and I think  
10 perhaps the most delightful functional division that we  
11 observe is the division between the green and red lights--

12 THE CHAIRMAN: You have 30 seconds .

13 DELEGATE H. TAYLOR:--when we close another  
14 chapter in this Constitutional proceedings, and I ask now  
15 that you help me see that the reds function the best  
16 and let's bury this amendment.

17 THE CHAIRMAN: Any other delegate desire to  
18 speak?

19 Delegate Chabot.

20 DELEGATE CHABOT: It is obvious what I say  
21 now will not affect the outcome of this amendment.



1       Notwithstanding the fact that it will mean that this  
2       convention has determined that a person's property is far  
3       more important than a person's liberty. However, I think  
4       it is important that we consider the remarks that were  
5       made by Delegate Taylor, Delegate Harry Taylor.

6               I suggest that we think, that we realize a bit  
7       more that we are drafting here and unfortunately to a great  
8       extent drafting on the floor here a constitution, not a  
9       statute.

10              We are not going to have next year or the year  
11       after to remedy the defects. We are not going to have  
12       a legislative council in between that is going to study  
13       it and call us back to special session, if necessary.

14              I suggest that we be willing to take whatever  
15       time is necessary, whether it means Saturdays, Sundays or  
16       between December 12th and January 12th, and try to come  
17       up with a document that is a good one for the State,  
18       and not be so concerned with the question of whether or  
19       not we are getting a little bit impatient.

20              I suggest that our impatience is not going to  
21       harm us so much as it will harm the rest of the state and



1       our children.

2               THE CHAIRMAN: Are you ready for the question?

3               The question arises on the adoption of Amendment  
4       No. 17.

5               A vote Aye is a vote in favor of the amendment;  
6       a vote No is a vote against. Cast your votes.

7               Have all delegates voted?

8               Does any delegate desire to change his vote?

9               The Clerk will record the vote.

10              There being 11 votes in the affirmative and  
11       103 in the negative, the motion is lost. The amendment  
12       is rejected.

13              The Chair would like to take this opportunity  
14       to acknowledge the presence in the gallery of 36  
15       students from Kensington Junior High School of Montgomery  
16       County, 14 students of Tacoma Park Junior High School  
17       in Montgomery County. We are delighted to have them with  
18       us. (Applause)

19              THE CHAIRMAN: Delegate Grant, do you still desire  
20       to offer your amendment EJ.

21              DELEGATE GRANT: I would like to offer it, but





1 I would like to offer it with a very minimum of debate.

2 THE CHAIRMAN: Very well. Let me ask the pages  
3 to distribute Amendment EJ.

4 Please mark this Amendment No. 18. I might say  
5 the Chair had some difficulty with this amendment, in  
6 deciding whether or not it was equivalent to the  
7 amendments previously offered. It might appear to be  
8 such, but in combination with the other language, I do  
9 not think it is. I think the amendment is in order, although  
10 the effect of it is included in some of the other amendments  
11 in conjunction with other matters.

12 For what purpose does Delegate Miller rise?

13 DELEGATE B. MILLER: Mr. Chairman, you acknowledged  
14 14 students from Tacoma Junior High School. There are 94  
15 students here with their teacher today. I would like that  
16 to be noted.

17 THE CHAIRMAN: Thank you.

18 The Clerk will read Amendment No. 18.

19 MR. QUILLEN: Amendment No. 18 to Committee Recom-  
20 mendation No. JB-1 by Delegate Grant.

21 On page 4 Section 5.11 Commissioners strike



1 the last sentence on lines 1 through 4, inclusive,  
2 and insert in lieu thereof the following: "Commissioners  
3 may exercise such power as prescribed by law."

4 THE CHAIRMAN: Is the amendment seconded?

5 DELEGATE BENNETT: Seconded.

6 THE CHAIRMAN: The amendment having been  
7 seconded by Delegate Bennett, the Chair recognizes  
8 Delegate Grant to speak to the amendment.

9 DELEGATE GRANT: This is essentially the same  
10 amendment as Amendment 14, the last thing we voted on  
11 yesterday. What it is is simply it says that instead  
12 of commissioners exercising power to prescribe by rule,  
13 which obviously this convention did not want, that they  
14 would exercise such powers as prescribed by law.

15 This would mean that if the General Assembly  
16 in its wisdom so desired, they could give to the  
17 judiciary the authority to prescribe their power by  
18 rule. If they did not trust the judiciary, as this  
19 convention indicated, there may be some doubt, then they  
20 could prescribe it by law.

21 I think it should be made eminently clear





1 exactly what the desires of the Convention are on this  
2 point beause if it is not allowed to be done by the  
3 General Assembly, it means that short of a Constitutional  
4 amendment, the commissioners will be restricted to the  
5 very few powers which are set forth in the section as it  
6 now stands.

7 I think the Convention should indicate that  
8 they desire the Commissioners to have these powers and  
9 no more short of constitutional amendment or that they  
10 desire the General Assembly to be able to handle the  
11 situation as times change.

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: Mr. Chairman, ladies and  
14 gentlemen of the Convention, I must rise to oppose this  
15 amendment, and for the same reasons, I have advanced  
16 in opposing Amendment 14 and others dealing with this  
17 same subject.

18 The fact of this amendment, as I understand  
19 it, would be really more dangerous than any previously  
20 proposed in relation to this section of the committee's  
21 draft. By deleting the words "proposed by Amendment 17"



1 and substituting that suggested, quote, Commissioners  
2 may exercise such powers as prescribed by law, that would  
3 lead to the legislature as I see it in effect with the  
4 right to prescribe the jurisdiction of the four-tier  
5 system, to deplete jurisdictional powers of the District  
6 Court and prescribe by law powers to the commissioners  
7 that would in effect destroy the balance the committee  
8 recommendation had in mind for this four-tier court  
9 system, together with the commissioners functioning only  
10 in a limited area, consistent with their non-legal training  
11 and qualifications.

12 For those reasons we must therefore strenuously  
13 oppose this amendment.

14 THE CHAIRMAN: Any other delegate desire to  
15 speak in favor?

16 Delegate Fox?

17 DELEGATE FOX: Mr. Chairman, a point of parliament-  
18 ary inquiry. If this is adopted, it obliterates Amendment  
19 No. 16, does it not, that was just unanimously adopted?  
20 It completely destroys Amendment No. 16.  
21



1 THE CHAIRMAN: That is true. That is one of  
2 the reasons the Chair had some difficulty in determining  
3 whether the amendment was in order, but it is not  
4 precisely the same. I think it is in order. I think it  
5 would have the effect of a vote exactly on the other  
6 amendment.

7 Any other delegates desire to speak in favor  
8 or against? Delegate Hardwicke?

9 DELEGATE HARDWICKE: I am very much aware of  
10 Delegate Grant's admonition he did not expect a great  
11 deal of debate on this. Frankly, I am quite sympathetic  
12 to the concept, and I wonder if Delegate Grant will  
13 consider leaving in lines 1 through 4, and in lieu of  
14 striking them to provide that the Commissioners may  
15 exercise such other powers as may be prescribed by law,  
16 making it clear that the other powers that could be pre-  
17 scribed by law would be similar to the powers in lines  
18 1 through 4, similar to this, and the reason this has a  
19 great deal of merit, Mr. Chairman, and with all due respect  
20 to Chairman Mudd's viewpoint is that we are freezing into  
21 the Constitution certain, I think, very limited concepts





1 and I do not think it is a good constitutional principle  
2 to do so, and it seems to me that if we permit the  
3 legislature to add other similar things to those that  
4 are set out in the constitution, we are going to avoid  
5 a great deal of unnecessary amendment to this document.

6 THE CHAIRMAN: Delegate Grant.

7 DELEGATE GRANT: I would be perfectly willing to  
8 accept that modification and leave it to the Committee on  
9 Style and Drafting to draft the language to this extent.

10 THE CHAIRMAN: I don't think we can do it quite  
11 that way. Delegate Grant.

12 DELEGATE GRANT: What I meant was, in the use  
13 of a term other than a Latin legal term, which might  
14 not be completely understandable to all the delegates.

15 THE CHAIRMAN: I think there are too many substan-  
16 tive questions involved in the proposition to leave  
17 it to the committee on Style merely on a statement of  
18 intention, Delegate Grant. I think you can perhaps modify  
19 your amendment, but the Chair would have to inquire, for  
20 instance, as to several things:

21 Under Amendment 16, you would have the provision



1 that the various powers there spelled out should be  
2 exercised only as prescribed by rule. Did you intend to  
3 delete that or leave it in?

4 DELEGATE GRANT: It would be my intention that all  
5 the powers previously prescribed, that they would be by  
6 rule, and then such other similar powers as proposed  
7 by Delegate Hardwicke would be added by the legislature.

8 THE CHAIRMAN: The Chair would then rule the  
9 amendment out of order as being the same as the amendment  
10 which would have deleted the language, then only as  
11 prescribed by rule, and have left it to both the legislature  
12 and the court to prescribe by statute or by rule.  
13 That was Amendment 15. If I understand you -- Delegate  
14 Grant.

15 DELEGATE GRANT: It being my desire not to have  
16 a prolonged debate on this matter, I would suggest we  
17 go ahead and vote on it, and if there is another amendment  
18 offered which would cure whatever defects, we start de  
19 novo.

20 THE CHAIRMAN: Delegate Grant, the Chair does  
21 not desire in any way by making a suggestion to put





1 you in a box or lead you down a maze path, so to  
2 speak. It would be possible to modify your amendment in  
3 such a way that it would not be the same as one of the  
4 others. I am not encouraging you to do so. I do not want  
5 to shut you off.

6 Delegate Grant.

7 DELEGATE GRANT: I would suggest in that case then  
8 that if you would give leave to come back to this section  
9 at a later time, that an amendment will be suitably  
10 drafted, without taking up time for debate to draft it on  
11 the floor.

12 THE CHAIRMAN: Is Amendment 18 then withdrawn?

13 DELEGATE GRANT: I withdraw the amendment.

14 THE CHAIRMAN: Amendment 18 is withdrawn.

15 Just tear it up. We will do away with the number, too.

16 Are there any other amendments to Section 5.11?

17 Any other amendment to Section 5.11?

18 Delegate Malkus, do you desire to offer your  
19 amendment to Section 5.10?

20 DELEGATE MALKUS: Mr. President, I thank you  
21 for your patience.



1 I have an amendment to 5.10, which will do this:-

2 THE CHAIRMAN: Just a moment. The pages will  
3 please distribute Amendment AW. This will be numbered  
4 Amendment 18.

5 The Clerk will read the amendment.

6 MR. QUILLÉN: Amendment No. 18 to Committee  
7 Recommendation No. jB-1 by Delegate Malkus.

8 On page 3 Section 5.10 Composition of District  
9 Court in line 36 strike out the word "district" and insert  
10 in lieu thereof the word "county"; and in lines 36 through  
11 39, inclusive, strike out the following sentence "In any  
12 district containing more than one county, a District Court  
13 judge shall sit regularly in each county."

14 THE CHAIRMAN: Is the amendment seconded?

15 (Whereupon, the amendment was seconded.)

16 THE CHAIRMAN: The amendment having been  
17 seconded, the Chair recognizes Delegate Malkus to speak  
18 to the amendment.

19 DELEGATE MALKUS: Mr. President, Members of the  
20 Convention, I will be brief.

21 All that this amendment does, it guarantees



1 to each county that they shall have a resident district  
2 judge. By your previous action you have guaranteed that  
3 they have a resident superior court judge.

4 I have just finished talking to probably the  
5 second most important states attorney in the State of  
6 Maryland, John Sanford. He has more problems than anyone  
7 else, with the exception of my good friend from Baltimore  
8 City, and he said it is abso lutely imperative that  
9 they have a guarantee that areas such as Worchester County  
10 would have a resident District Court judge.

11 Now, I believe hat most of us who come before  
12 a court come before the trial magistrate or people's  
13 courts, which will soon be known as district courts, and  
14 this is all my amendment does.

15 Now, if the verbiage is not right, I will submit  
16 to any change but it was written by Mr. Lee Benson, who  
17 I believe knows the subject matter very well.

18 In closing, the amendment guarantees that every  
19 county shall have a district judge, like your previous  
20 action has guaranteed that they will have a superior court  
21 judge.





1 THE CHAIRMAN: The Chair recognizes Delegate Mudd.

2 DELEGATE MUDD: Mr. Chairman, ladies and gentle-  
3 men of the committee, I rise to oppose this amendment.  
4 It may appear for a strange reason but it is to leave this  
5 matter with the legislature in its wisdom to determine  
6 whether the requirement advanced by Delegate Malkus is  
7 necessary, and if so, that it be accomplished in the legis-  
8 lature when and if necessary, where the power to create  
9 districts is vested by the committee recommendation.

10 May I briefly call your attention to the facts  
11 and figures contained in the very able report of the  
12 Case Commission referred to yesterday by our distinguished  
13 Delegate, Dick Case, and which exhaustively investigated  
14 the judicial processes in Maryland some time ago.

15 That report contains a wealth of facts and figures  
16 as to the caseload in the various political subdivisions  
17 of the counties. There is a constant change in the trend  
18 in various areas of the state.

19 It occurred to us that at this particular time,  
20 particularly in view of the light caseload before  
21 the courts of limited jurisdiction, and the fact that



1 a great number of these cases are uncontested, that  
2 the legislature in its wisdom initially at least may not  
3 wish to create a district for every county, and thereby  
4 require a resident judge in every county at the district  
5 court level.

6 We therefore oppose the amendment, for the reason  
7 that we believe it is wiser to leave this discretion with  
8 the legislature in creating these districts for the  
9 district court as the circumstances may from time to time  
10 change, especially in view of some population projections  
11 which do, believe it or not, suggest a decrease in popula-  
12 tion in some areas of the state over the next five to  
13 fifteen years.

14 We therefore oppose the amendment.

15 THE CHAIRMAN: Any other delegate desire to speak  
16 in favor of the amendment?

17 Delegate Malkus?

18 DELEGATE MALKUS: I would like to ask the  
19 Chairman if he will yield to a question.

20 THE CHAIRMAN: Delegate Mudd, do you yield  
21 to a question?





1 DELEGATE MUDD: Gladly.

2 THE CHAIRMAN: Delegate Malkus.

3 DELEGATE MALKUS: How often does the magistrate  
4 sit in Ocean City?

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: I have not been able to afford  
7 a vacation there as often as I should , and frankly,  
8 I do not know.

9 THE CHAIRMAN: Delegate Malkus.

10 DELEGATE MALKUS: Since you have brought out  
11 your report, you have not explored every possible situation?

12 THE CHAIRMAN: Delegate Mudd.

13 DELEGATE MUDD: In my opinion no, when it is  
14 left to the decision of the legislature.

15 THE CHAIRMAN: Delegate Malkus.

16 DELEGATE MALKUS: Would you be surprised if  
17 I tell you that the magistrate at Ocean City sits seven  
18 days a week?

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: No.

21 THE CHAIRMAN: Are there any further questions,



1 Delegate Malkus?

2 DELEGATE MALKUS: Not at this time, Mr.  
3 President.

4 THE CHAIRMAN: Delegate Sybert.

5 DELEGATE SYBERT: Mr. Chairman, I rise in  
6 support of this amendment.

7 As Delegate Malkus pointed out, this body insured  
8 yesterday that there will be one superior court judge  
9 resident in each county, and at least I take it the effect  
10 of that amendment was that he would sit ordinarily in that  
11 county.

12 I point out that the District Courts in every  
13 jurisdiction will handle several times as many cases in  
14 the District Court as the Superior Court judges will.

15 The District Court will be the court  
16 in which most people, most citizens, with which most  
17 citizens will have contact.

18 I think it is imperative that we have not only  
19 a district court judge available at all times as a  
20 resident one would, but that the local district  
21 court judge will know the people and will know their customs



1 and the conditions in the county much better than a  
2 District Court judge from some other county in the same  
3 district.

4 For that reason, I think it is as a practical  
5 thing imperative that we have at least one district court  
6 judge available and who shall sit in his own county.

7 THE CHAIRMAN: Any other delegate desire to  
8 speak in opposition?

9 Delegate Case.

10 DELEGATE CASE: Mr. Chairman, ladies and gentle-  
11 men of the committee, Delegate Mudd correctly stated the  
12 fact, that this recommendation is based upon the best  
13 use of judicial manpower, and as much as I hate to speak  
14 in opposition to my good friend and long-time colleague,  
15 Delegate Sybert, I would call to the attention of the  
16 committee a few figures which I think will indicate the  
17 fallacy fo his approach.

18 For the year September 1, 1964, to August 31,  
19 1965, there were 413,000 traffic cases tried by the  
20 courts of limited jurisdiction in this state, of which  
21 only 6,000 were tried in Howard County.





1           During that same period there were 135,000  
2 civil cases terminated by the courts of limited juris-  
3 diction in this state, of which less than 300 were tried  
4 by courts of limited jurisdiction in Howard County.

5           Going back to Delegate Malkus for a minute, again,  
6 taking the traffic cases that were tried during this period,  
7 there were 413,000 of them; in Dorchester County, only  
8 958 of the total of 413,000 were tried in Dorchester  
9 County.

10           Now, ladies and gentlemen of the Convention, it  
11 seems to me this makes it abundantly clear that there  
12 is just not enough workload, not enough caseload in some  
13 counties to justify having one district judge. The idea  
14 is certainly to bring justice to the people, but you are  
15 going to have a proliferation of district judges if you  
16 follow the Malkus amendment.

17           I strenuously urge its defeat.

18           THE CHAIRMAN: Any other delegate desire to speak  
19 in favor of the amendment?

20           Delegate E. Churchill Miller?

21           DELEGATE E. C. MILLER: Mr. President, ladies



1 and gentlemen, I think that Delegate Case's figures  
2 overlook and do not speak to the phase of this that  
3 Delegate Sybert spoke.

4 There is an element involved here beyond the  
5 question of the number of cases involved.

6 Looking back over the years, I am conscious  
7 that the establishment of the lower courts in a county  
8 have a very decided effect upon the county, upon the law-  
9 abiding and non-law-abiding citizens of a county.

10 I rise to support the motion. I think that in  
11 spite of the numbers involved, that this is no answer.  
12 I think that such a judge sitting there is desirable for  
13 those counties, and I also think that the contact is even more  
14 desirable where there has been a lessening of direct  
15 legislative association with the counties.

16 I hope that you will be able to see this  
17 because my feeling about it is derived from observation  
18 over a great many years.

19 THE CHAIRMAN: Any other delegate desire to  
20 speak in opposition? Delegate Bothe?

21 DELEGATE BOTHE: I have a question of Delegate



1 Malkus.

2 THE CHAIRMAN: First, does anyone desire to  
3 speak in opposition?

4 Delegate Smith, Marvin Smith?

5 DELEGATE M. SMITH: Mr. Chairman, it is with  
6 reluctance, coming from one of the smallest counties  
7 of the state, and being the neighbor of Delegate Malkus,  
8 that I rise in opposition to this amendment.

9 I just do not think it is necessary.

10 Now, if Worcester County needs a full-time  
11 district judge, a letter I have in my possession from  
12 Judge Prettyman would seem to indicate they can use  
13 one and a fraction in Worcester County. Certainly the  
14 General Assembly in its wisdom will see fit to take  
15 care of that.

16 Now, I addressed a letter to each of the ten,  
17 I guess, circuit judges on the Eastern Shore to get  
18 their reaction to this matter.

19 In my own circuit, the five northern counties  
20 of the Shore, the circuit judges in Kent, Queen Anne,  
21 and Caroline, were of the opinion that there was no need





1 for a full-time district judge in those counties.

2 I addressed a letter to each individual member  
3 of the Caroline County Bar. Those who replied, who were  
4 certainly the leaders of the Bar, indicated that in their  
5 opinion there was not a need for a full-time district  
6 judge in Caroline County.

7 Now, I know all that Delegate Sybert has  
8 said with reference to judges, being acquainted with  
9 the mores of the people, et cetera, but I would have to say  
10 to you, sir, in my practice of the law in a county that  
11 was one of five counties in a circuit, that certainly  
12 Judges Kipner and Rollins from Cecil County, when they  
13 sat in our county, Judge Raisin from Kent County, and  
14 Judges Kadin and Hardin from Queen Anne County seemed  
15 well acquainted with the mores of our people.

16 THE CHAIRMAN: Does Delegate Malkus yield to  
17 a question from Delegate Bothe?

18 DELEGATE MALKUS: Reluctantly.

19 THE CHAIRMAN: Delegate Bothe.

20 DELEGATE BOTHE: The question is very simple,  
21 Delegate Malkus. I wondered if you had arranged to calculate



1 the additional cost to have a district court judge in  
2 those counties.

3 THE CHAIRMAN: Delegate Malkus.

4 DELEGATE MALKUS: Mr. President, when I get the  
5 basic overall cost of what this, what do they call it,  
6 four-tier, it will not be very difficult to answer Mrs.  
7 Bothe's-- I have known her longer than you have. She has  
8 been coming down here for a great many years, but when  
9 they tell us what the overall cost will be, then it will  
10 not be difficult, Mr. President, to say what the  
11 additional cost will be for the four or five counties now  
12 that we are talking about, and when the Chairman gives  
13 me those reports in writing, I will answer Mrs. Bothe's  
14 question.

15 THE CHAIRMAN: Any other delegate desire to speak in  
16 opposition to the amendment?

17 Delegate Stern, do you desire to speak in favor  
18 of the amendment?

19 (No response)

20 THE CHAIRMAN: Delegate Gilchrist?

21 DELEGATE GILCHRIST: Mr. Chairman, I should



1 simply like to point out to the Convention what the  
2 Convention has done so far with respect to this. Delegate  
3 Case made a comment that you were bringing justice to  
4 the people. What we have actually done so far is arrange  
5 to bring the people to justice.

6 The transportation problem, which has been  
7 created by this, is a little bit difficult for some people.

8 I would like to point out that the Convention has  
9 very carefully made arrangements to have a man tried for  
10 murder in his own county, but they have not given him  
11 the opportunity to be tried on a speeding charge or on  
12 violations of minor ordinances in his own county.  
13 It seems to me that an approach such as this is not entirely  
14 rational.

15 THE CHAIRMAN: Delegate Case.

16 DELEGATE CASE: Mr. Chairman, ladies and gentlemen  
17 of the committee, I rise to correct a statement Delegate  
18 Gilchrist has just made. I believe it was envisaged by  
19 our committee and certainly by this report that the district  
20 judge would be a travelling judge. He would travel to each  
21 county, and if a traffic violation took place in Garrett





1 County, the trial would be held in Garrett County. That  
2 is the whole idea of the district, so I think the comment  
3 that Delegate Gilchrist just made is not completely  
4 accurate.

5 THE CHAIRMAN: Delegate Gilchrist, it is the  
6 sentence in lines 36 to 39 of Section 5.10.

7 Delegate Grant.

8 DELEGATE GRANT: I would like to speak in favor  
9 of this, although I have to do it reluctantly because I am  
10 a member of a very small bar and this is going to create  
11 more problems, but first of all, the Committee of the  
12 Whole has decided that they are going to be very strict  
13 about what they allow the Commissioners to do, so this  
14 means essentially if you get a trial you are going to have  
15 to have the district court do it.

16 Now, what concerns me, and I think concerns  
17 possibly Delegate Malkus, too, is what Delegate Case said  
18 about caseloads.

19 In other words, they immediately decided how  
20 many district judges would be had on the basis of caseloads.  
21 It does not take very long to work out the fact that there



1 will be a sufficient supply of district judges in the urban  
2 areas where there are large caseloads.

3 It means that there will be an insufficiency  
4 of judges in the rural areas where there are small  
5 caseloads.

6 The district courts are simply the courts  
7 of immediate impression, the courts where most people come  
8 in. I really ask each delegate to put himself in a very  
9 typical situation of a man who is stopped for a traffic  
10 violation in an urban county, and it could be Garrett  
11 County, and has to travel 70 miles to the nearest district  
12 judge, have the case decided, and then 70 miles back  
13 to resume his journey, and that is exactly the distance  
14 from a town called Redhouse, in Garrett County, where Route  
15 50 crosses into West Virginia, to Cumberland, where it is nor-  
16 mal to presume that by caseload the district court would  
17 reasonably be required to spend all their time.

18 I would like to point out the old addage, that  
19 justice delayed is justice betrayed.  
20  
21



1 THE CHAIRMAN: Any further discussion? Delegate  
2 Stern.

3 DELEGATE STERN: Would Delegate Mudd yield  
4 for a question?

5 THE CHAIRMAN: Delegate Mudd, do you yield  
6 to a question?

7 DELEGATE MUDD: Yes, Mr. Chairman.

8 THE CHAIRMAN: Delegate Stern.

9 DELEGATE STERN: Taking what Delegate Case has  
10 just said, it bothers me and I would like the record ex-  
11 plicitly clear, nothing is mentioned in the Constitution  
12 as to venue, and is it the intent of the committee report  
13 that the judges shall be the ones that move where the  
14 heavy case load is and that the cases should not be  
15 brought down from one district court to another one because  
16 the judge doesn't want to move?

17 THE CHAIRMAN: Delegate Mudd?

18 DELEGATE MUDD: Definitely that is the inten-  
19 tion of the majority report.

20 DELEGATE STERN: Thank you.

21 THE CHAIRMAN: Delegate Gallagher.





1 DELEGATE GALLAGHER: Will Delegate Grant yield  
2 to a question?

3 THE CHAIRMAN: Delegate Grant, do you yield to  
4 a question?

5 DELEGATE GRANT: Yes, sir.

6 THE CHAIRMAN: Delegate Gallagher?

7 DELEGATE GALLAGHER: Assuming six members of  
8 the Bar in Garrett County, if you should be fortunate  
9 enough to get one member of the Court of Appeals, one  
10 circuit court judge, one district judge and one commission-  
11 er, is it not true that you will be reduced to two  
12 practicing members of the Bar in Garrett County?

13 THE CHAIRMAN: Delegate Grant?

14 DELEGATE GRANT: This is the reason I said  
15 that I was most reluctant. I might point out that the  
16 summertime population rises to 56,000 people, when we have  
17 all the people up there to enjoy the cool weather and  
18 not the six inches of snow we have now, and that with one  
19 judge representing 23,000 or 28,000 people and one attorney  
20 representing the other 28,000 people it would be quite a  
21 day.



1 THE CHAIRMAN: Delegate Gallagher.

2 DELEGATE GALLAGHER: One further question, Mr.  
3 Chairman. In view of the fact that the Court of Appeals  
4 has sworn in this morning a new crop of young lawyers, how  
5 is the health of the six in Garrett County?

6 DELEGATE GRANT: We can always stand some  
7 help.

8 THE CHAIRMAN: Is there any further discussion?  
9 Delegate Pullen?

10 DELEGATE PULLEN: May I ask Delegate Grant a  
11 question?

12 THE CHAIRMAN: Delegate Grant, do you yield  
13 to a question?

14 DELEGATE GRANT: Yes, indeed.

15 THE CHAIRMAN: Delegate Pullen.

16 DELEGATE PULLEN: I am disturbed by the unanimity  
17 among lawyers. It is not very healthy. I am very serious  
18 about this question: Is it correct that a person in-  
19 volved in a traffic violation, at Red House, which I know  
20 very well, would have to go all the way to Cumberland to  
21 be tried?



1 THE CHAIRMAN: Delegate Grant?

2 DELEGATE GRANT: This is correct. We actually  
3 now have a trial magistrate who sits seven days a week,  
4 correction, six days a week and normally in a traffic vio-  
5 lation he is brought over a distance of about 18 miles to  
6 try him. Without this facility, assuming a man outbound  
7 to California or someplace and if you do not have a  
8 district court where he can be tried, then it would simply  
9 be a matter of having him taken to Cumberland and it is  
10 70 miles to Cumberland. Cumberland is the logical place  
11 to put a district court if you are to calculate by work  
12 load, because you would have to indicate the big heavy  
13 work load would be in Allegheny County, which has 80,000  
14 people as opposed to Garrett County, which has only 20.

15 THE CHAIRMAN: Delegate Pullen.

16 DELEGATE PULLEN: I have one other question,  
17 sir. I am quite familiar with the geography and the  
18 people of Garrett County but the thing that bothers me  
19 is, is it possible under this provision for the court to  
20 sit sufficiently in, say, Oakland, which is the center of  
21 the county? These are two simple fundamental facts that





1 we ought to know before we vote.

2 THE CHAIRMAN: Delegate Grant.

3 DELEGATE GRANT: I think you are quite correct.  
4 If you recall yesterday I addressed a question to Delegate  
5 Mudd, and asked him essentially if it was his intention  
6 that the court would sit regularly in the county. He  
7 indicated that there had been a county clerk provided, and  
8 he presumed that the court would sit there regularly.

9 I also asked him relative to the translation,  
10 if it would be possible for the superior court judge to  
11 sit in this court. He indicated this would also be  
12 possible. However, I do point out to you that if for  
13 some reason or other the superior court judge was in some  
14 other part of the state on an assignment, that it probably  
15 would be necessary then to take the man to Cumberland,  
16 unless that happened to be the day that the district  
17 court judge was sitting in Garrett County.

18 This would particularly be so because it  
19 would not be possible to appoint a commissioner to hear  
20 this type of case under the action taken by the Committee  
21 of the Whole this morning.



1 THE CHAIRMAN: Are you ready for the question?  
2 The question arises on the adoption of Amendment Number 18.  
3 Delegate Malkus.

4 DELEGATE MALKUS: Could I say one thing in  
5 closing?

6 THE CHAIRMAN: You may.

7 DELEGATE MALKUS: I doubt seriously that which  
8 I am going to say will have any effect on any of your  
9 votes, but if you are going to go ahead and vote for a  
10 superior court in every county, which the people have very  
11 little contact with, and then are going to have to have  
12 circuit riders in the district courts, that is the only  
13 way this thing will work.

14 I think it is absolutely unfair to the people  
15 who for the most part, whose only contact with the law is  
16 marital troubles or traffic court violations. I think it  
17 is important to have a judge close to the subject matter  
18 who will understand the circumstances, rather than  
19 riding around in a 110 mile district, which I represent  
20 as the state senator.

21 THE CHAIRMAN: Are you ready for the question?



1 The question arises on the adoption of Amendment Number  
2 18. A vote Aye is a vote in favor of the adoption of the  
3 amendment. A vote No is a vote against. Cast your votes.

4 Have all delegates voted? Does any delegate  
5 desire to change his vote?

6 The Clerk will record the vote.

7 There being 69 votes in the affirmative and 60  
8 in the negative, the amendment is adopted.

9 The pages will distribute the amendment marked  
10 BL.

11 DELEGATE CLARKE: Mr. President.

12 THE CHAIRMAN: Mark this Amendment Number 19.  
13 Delegate Clarke.

14 DELEGATE CLARKE: Mr. Chairman, members, ladies  
15 and gentlemen, seated in the gallery above the President's  
16 desk are 35 students from the ninth grade class of Kensing-  
17 ton Junior High School. These young ladies and gentlemen  
18 are accompanied by their teacher, Mrs. Tiff, and are visit-  
19 ing the Convention at the suggestion of Miss Susan Hickey,  
20 a member of the class, who was born in Montgomery County  
21 and who has added a great deal to its charm.





1 THE CHAIRMAN: Delighted to have them with us.

2 The Clerk will read Amendment Number 19.

3 Delegate Grant, the Chairman understands this  
4 amendment, although offered by Delegate Hardwicke, is  
5 the one that you had contemplated offering?

6 DELEGATE GRANT: This is correct.

7 THE CHAIRMAN: Read Amendment Number 19.

8 MR. QUILLEN: Amendment Number 19 to Committee  
9 Recommendation Number JB-1 by Delegate Hardwicke.

10 On page 4 Section 5.11 Commissioners strike  
11 out line 3 and insert in lieu thereof the following:  
12 ",incarceration pending hearing, and other matters as may be  
13 prescribed by law, and then".

14 THE CHAIRMAN: The Chair has difficulty with  
15 the amendment, because it does not take into consideration  
16 Amendment Number 16, which amended lines 2 and 3. The  
17 Chair understands that the amendment is not intended to  
18 alter in any way the change in Section 5.11 to Amendment  
19 16; is that correct? Delegate Hardwicke.

20 DELEGATE HARDWICKE: That is correct, Mr.  
21 Chairman. Actually to complete this, forget what goes



1 before the addition, the phrase "and other matters as  
2 may be prescribed by law" is intended to precede the clause  
3 and then only as prescribed by rule, and it is not in-  
4 tended to reject Delegate Bothe's amendment, but to add  
5 whatever language she had inserted in her successful  
6 amendment, to add to that, "and other matters as may be  
7 prescribed by law."

8 THE CHAIRMAN: With this understanding the  
9 Chair accepts the amendment.

10 Is there a second?

11 DELEGATE BENNETT: I second.

12 THE CHAIRMAN: The amendment having been  
13 seconded, the Chair recognizes Delegate Hardwicke to  
14 speak to the amendment.

15 DELEGATE HARDWICKE: Mr. Chairman, ladies and  
16 gentlemen of the Committee, the intention of, or the  
17 purpose of this amendment is to make it clear that the  
18 commissioners may exercise similar other powers as those  
19 named. We are not intending to permit the commissioners  
20 to set the world on fire, or to get into other judicial  
21 areas, but we do think in proposing this amendment that



1 they ought not be frozen to the limited phraseology that  
2 is set forth in lines 2 and 3, and this would permit the  
3 legislature to add additional similar functions, and I  
4 want to emphasize, similar, and consequently I think this  
5 would give the needed additional rights from time to time  
6 over the next 50, 60 or 70 years, to give the commissioners  
7 some modest other jurisdiction along the same line.

8 I want to emphasize that in our whole four tier  
9 system, the legislature is given complete power over the  
10 jurisdiction of every single layer.

11 Now we don't propose that they be given un-  
12 limited power with regard to the commissioners, but we  
13 do propose that there be some expanded ability within  
14 the concept as set forth in the majority report.

15 THE CHAIRMAN: Delegate Mudd.

16 DELEGATE MUDD: Mr. Chairman, ladies and  
17 gentlemen of the Committee, I must arise in opposition  
18 to this amendment and fear that what I have to say will  
19 sound like a broken record. However, this provision  
20 proposed by Amendment 19 to allow the legislature to  
21 prescribe by law the exercise of other powers by these





1 commissioners is contrary to the concept of the court  
2 structure as envisioned by the Committee on the Judicial  
3 Branch.

4 I do point out to the proponents, Delegates  
5 Hardwicke and Grant, that the word, similar, is not in  
6 the amendment. Even if it were, I do not feel it would  
7 help a great deal.

8 The problem here is, as we see it, that the  
9 role of the Commissioners in the court structure we  
10 contemplate is a limited role, and the legislature, if  
11 it is allowed to assign responsibilities, duties and  
12 powers to these commissioners over and beyond the strict  
13 limitations contemplated within the language adopted, and  
14 as provided by rule by the courts, that we can weaken the  
15 court structure and end up with judicial power not in-  
16 tended in the hands of non-lawyers, which is entirely  
17 contrary to the whole concept of this recommendation by  
18 our committee.

19 Therefore, I must urge you, with all sincerity  
20 again, to vote against this amendment.

21 THE CHAIRMAN: Does any delegate desire to speak



1 in favor of the amendment? Delegate Bennett.

2 DELEGATE BENNETT: Mr. Chairman, members of  
3 the Convention, if we are to uphold respect for the law  
4 on the part of the public, we have got to improve the  
5 caliber and prestige of the commissioners where the  
6 public purse comes in contact, as when bail is set, and  
7 we can't improve the caliber of the commissioners unless  
8 we find some grounds or some way to raise their salaries.  
9 It seems to me the legislature is not going to do that  
10 unless we can find some way of at least granting the  
11 legislature power to give them some additional duties,  
12 like for instance, assigning them the power to take  
13 depositions, or to act as examiner when this is agreeable  
14 to both sides of the case, and perhaps act as a hearing  
15 officer now and then.

16 That could be done by the legislature at a time  
17 that it prescribes its duties.

18 It seems to me of a paramount importance that  
19 we uplift the commissioner, give them the facilities they  
20 need, the dignity that is required to gain public respect  
21 for the law, and incidentally, may I say with regard to



1 the U. S. Commissioners, that is precisely what Senator  
2 Tidings of this state is seeking to accomplish through a  
3 new law he has introduced, which has had the approval of  
4 the Senate, that would permit the assignment of additional  
5 duties, and I have grave doubt that the legislature is  
6 going to frustrate the four tier court by allowing them  
7 to say what the commissioner can do.

8 I therefore hope that this amendment will be  
9 approved.

10 THE CHAIRMAN: Does any delegate desire to  
11 speak in opposition to the amendment?

12 Are you ready for the question?

13 Delegate Dukes.

14 DELEGATE DUKES: Will Delegate Hardwicke yield  
15 for a question?

16 THE CHAIRMAN: Delegate Hardwicke, do you yield  
17 to a question?

18 DELEGATE HARDWICKE: Yes, Mr. Chairman.

19 THE CHAIRMAN: Delegate Dukes.

20 DELEGATE DUKES: Delegate Hardwicke, as I  
21 read the provision as now amended, it would appear that





1 the matter, and then only as prescribed by rule, refers  
2 not only to the specified magistrates but also those  
3 prescribed by law.

4 DELEGATE HARDWICKE: Yes.

5 DELEGATE DUKES: The legislature could set  
6 forth new duty but it would still be prescribed by  
7 rule as to how it would be exercised?

8 DELEGATE HARDWICKE: That is very definitely  
9 my intention. In other words, even though the legisla-  
10 ture should add an additional function, like these func-  
11 tions, the court would still have jurisdiction over it  
12 with regard to the rule, so that it doesn't get out of  
13 hand at all, it seems to me.

14 THE CHAIRMAN: Delegate Henderson.

15 DELEGATE HENDERSON: Mr. Chairman, I would  
16 like to point out something in support of the commission's  
17 proposal and against adoption of this amendment, that  
18 it was the majority of the committee's thought in this  
19 matter that this new court system, at the lowest level,  
20 would be put on a thoroughly professional basis, and it  
21 was conceived, that while at the present time, and in some



1 local areas, a commissioner might be necessary to handle  
2 these matters of bail and release and things of that sort,  
3 that ultimately this should be handled entirely as a  
4 judicial function. Perhaps these commissioners would  
5 blow away in the end, as magistrates have indeed in many  
6 parts of the state.

7 We have adopted an amendment which puts the  
8 full-time man, a district judge in every county, so that the  
9 need for these commissioners is still further minimized,  
10 and the concept of an untrained layman handling the  
11 duties in order to be on the job and relieve the district  
12 judge will be still less necessary then at the present  
13 time.

14 So I feel that this amendment should be  
15 defeated. We are trying to put the whole administration  
16 of judges on a thoroughly professional basis; if so, this  
17 device of the commissioner is simply to meet a practical  
18 situation with the hope that in the end it would all be  
19 professional.

20 THE CHAIRMAN: Are you ready for the question?

21 The Clerk will sound the quorum bell. The question



1 arises on the adoption of Amendment 19. So that the  
2 record may be entirely clear, the Chair will read the  
3 amendment as it believes it should be phrased: On page  
4 4, Section 5.11, Commissioners, line 3, insert after  
5 "incarceration pending hearing", the following; "Other  
6 matters as may be prescribed by law".

7 A vote Aye is a vote in favor of the amendment;  
8 a vote No is a vote against. Cast your votes.

9 Has every delegate voted? Does any delegate  
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 27 votes in the affirmative and 93  
13 in the negative the motion is lost. The amendment fails.

14 For what purpose does Delegate Beatrice Miller  
15 rise?

16 DELEGATE B. MILLER: A point of personal  
17 privilege, Mr. Chairman. I should like to acknowledge the  
18 presence in the gallery behind me of ten students from  
19 Walt Whitman High School in Montgomery County, and in the  
20 gallery across the hall from me, the other members of the  
21 class from Tacoma Park Junior High School.





1 THE CHAIRMAN: Delighted to have them with  
2 us. (Applause.)

3 THE CHAIRMAN: For what purpose does Delegate  
4 Clagett rise?

5 DELEGATE CLAGETT: For the purpose, Mr. Chair-  
6 man, of a motion to reconsider Amendment Number 18.

7 THE CHAIRMAN: Is the motion seconded?

8 DELEGATE CASE: Second.

9 THE CHAIRMAN: It is regularly moved and  
10 seconded that the Committee of the Whole reconsider the  
11 vote by which Amendment Number 18 was adopted. The Clerk  
12 will sound the quorum bell.

13 DELEGATE SCANLAN: Mr. Chairman.

14 THE CHAIRMAN: Delegate Scanlan.

15 DELEGATE SCANLAN: A parliamentary inquiry. I  
16 want to know whether Mr. Clagett voted with the prevailing  
17 side.

18 DELEGATE CLAGETT: I believe we enter the  
19 Committee of the Whole and it makes no difference.

20 THE CHAIRMAN: I don't believe that is a  
21 requirement under the rule for him to move reconsideration.



1 DELEGATE SCANLAN: It isn't a requirement when  
2 we sit in the Convention. The rule as to sitting in  
3 the Committee of the Whole is silent. Another rule in-  
4 corporates by reference Robert's Rules of Order, wherein  
5 a requirement does exist.

6 THE CHAIRMAN: The rules also provide that the  
7 Committee of the Whole shall follow the same rules as  
8 the Convention where applicable. The Chair rules that  
9 Delegate Clagett's motion is in order, regardless of  
10 which way he voted on the Amendment 18. The Chair  
11 recognizes Delegate Clagett to speak to the motion to  
12 reconsider.

13 DELEGATE CLAGETT: Mr. Chairman, in order  
14 that there could be no confusion at the outset, I voted  
15 in opposition to the amendment at the time that the vote  
16 was cast, and I would now urge those who voted for it  
17 to reconsider, and very carefully understand what they have  
18 done.

19 Section 5.10, as drafted, and recommended by  
20 the --

21 THE CHAIRMAN: Delegate Clagett, will you pardon



1 the Chair a moment?

2 DELEGATE CLAGETT: Certainly.

3 THE CHAIRMAN: Will the Sergeant at Arms  
4 please see if he can find Delegate Malkus in the corridors?

5 You may proceed, Delegate Clagett.

6 DELEGATE CLAGETT: This sounds like a good  
7 opportunity. However, I am quite serious about the merits  
8 of the matter, rather than any other aspects that may  
9 have gotten into the current and stream of things.

10 THE CHAIRMAN: For what purpose does Delegate  
11 Scanlan rise?

12 DELEGATE SCANLAN: A point of personal  
13 privilege, Mr. Chairman.

14 THE CHAIRMAN: I don't believe your personal  
15 privilege can interrupt a speaker during debate. The  
16 Chairman will recognize you when he finishes.

17 DELEGATE SCANLAN: A parliamentary inquiry,  
18 perhaps.

19 THE CHAIRMAN: State your inquiry.

20 DELEGATE SCANLAN: My inquiry is, would it not  
21 be more considerate not to proceed with argument on





1 reconsideration until Delegate Malkus has returned to  
2 the chamber? This matter could then be taken up immediate-  
3 ly upon his return. He won't be here to hear the  
4 arguments being made against his original proposal and  
5 I don't think it quite fair.

6 THE CHAIRMAN: The Chair rang the quorum bell  
7 when the motion was made. The Chair has sent the Sergeant  
8 at Arms to find Senator Malkus, if possible. We will  
9 wait a few moments and see what the Sergeant at Arms  
10 reports.

11 Would you relax a moment, Delegate Clagett?

12 DELEGATE CLAGETT: Mr. Chairman, may I relax  
13 with the statement that I would be most happy to wait un-  
14 til after lunch and be sure that the good Senator and  
15 delegate is present. What I have to say goes to the  
16 merits, not to the personality, although to a certain  
17 extent--

18 THE CHAIRMAN: All right, if you will relax,  
19 we will wait a moment. Delegate Gallagher.

20 DELEGATE GALLAGHER: Mr. Chairman, would it be  
21 appropriate to make a Committee announcement at this time



1 while we are waiting?

2 THE CHAIRMAN: Yes, I think so. Delegate  
3 Gallagher.

4 DELEGATE GALLAGHER: Mr. Chairman, the Com-  
5 mittee on the Legislative Branch will meet in Room H-8  
6 immediately after we adjourn the full Convention today.  
7 I want to tell the Committee that, through the generosity  
8 of Mr. and Mrs. Gilchrist, lunch is being provided in  
9 the Committee room from the leftover's of last night's  
10 party.

11 THE CHAIRMAN: The Chair is advised that  
12 Delegate Malkus is on his way to the chamber and will be  
13 here momentarily.

14 While we are waiting, are there any other  
15 announcements by committee chairmen which need be made  
16 before lunch? Delegate Scanlan?

17 DELEGATE SCANLAN: There will be a very brief  
18 meeting of the Rules Committee right after the recess  
19 for lunch down in the basement of the Shaw House.

20 THE CHAIRMAN: Delegate Hodge Smith?

21 DELEGATE H. SMITH: A point of personal



1 privilege, Mr. Chairman.

2 THE CHAIRMAN: State the privilege.

3 DELEGATE H. SMITH: I would like to recognize  
4 the presence in the gallery of Mrs. Smith, who is cele-  
5 brating her wedding anniversary today. (Applause)

6 THE CHAIRMAN: The Chair cannot refrain from  
7 inquiring whether the Delegate Hodge Smith would like to  
8 correct the record to say "Our", instead of "her".

9 DELEGATE BENNETT: Leave it to the Committee  
10 on Style.

11 THE CHAIRMAN: Will the Clerk please sound the  
12 quorum bell again?

13 Delegate Malkus, Delegate Clagett has moved to  
14 reconsider the vote by which Amendment Number 18 was  
15 adopted. His motion has been seconded. The Chair now  
16 recognizes him to speak to the motion to reconsider.

17 Delegate Clagett.

18 DELEGATE CLAGETT: Mr. Chairman, reference  
19 to Section 5.10, titled "Composition of District Court":  
20 lines 29 and 30 show that the district court shall be  
21 composed of the number of judges prescribed by law.





1           That means in the most simple language that  
2           the General Assembly determines where and when a district  
3           court shall be needed, and the number of judges to ade-  
4           quately man it.

5           It further goes on to provide that the state  
6           shall be divided by law into districts, and there again,  
7           the responsibility rests with the General Assembly to  
8           accomplish that division of the state into the districts  
9           that are needed.

10           We have there the degree of public policy to  
11           be determined by the body that should determine that  
12           public policy.

13           I feel that by our vote, 69 to 60 in favor of  
14           Delegate Malkus's amendment, we have attempted to substi-  
15           tute our judgment for the judgment of the General Assembly,  
16           and without adequate consideration of all of the factual  
17           matter that would be available to it, and which has not  
18           been available and adjusted by this body.

19           In particular we have failed to take into  
20           consideration the very lengthy investigation, and  
21           excellent report that was made by the Maryland State Bar



1 Association, through its committee headed up by Delegate  
2 Case, when this very matter was considered and was  
3 reported on by that committee, and considered by the  
4 Bar itself at its annual convention in Atlantic City,  
5 and the report of that Committee adopted unanimously by  
6 some 400 or more lawyers there assembled.

7 It points up that sometimes we take action  
8 in support of a person or a personality where we admire  
9 and where we enjoy and where we feel that there is going  
10 to be no damage done by casting the vote in that direction  
11 and for those reasons.

12 However, here we see pointed up --

13 THE CHAIRMAN: You have one-half minute,  
14 Delegate Clagett.

15 DELEGATE CLAGETT: I point out, leaving that  
16 thought, because it needs no further amplification, if  
17 we let this amendment stand, and if we impose a district  
18 judge in each county, along with a superior court judge,  
19 we have in some of the counties unnecessary judicial  
20 material, receiving salaries of \$30,000 each man. It  
21 reflects upon the quality of the judiciary, it reflects



1 upon the stature and standing of the individual. We do  
2 not need it. The General Assembly can adequately provide  
3 for it when the time comes.

4 I ask you to carefully reconsider your vote  
5 and leave this matter with the General Assembly as  
6 recommended by the majority view of the Committee.

7 THE CHAIRMAN: The Chair recognizes Delegate  
8 Malkus.

9 DELEGATE MALKUS: Will the gentleman yield?

10 THE CHAIRMAN: His time has expired, Delegate  
11 Malkus.

12 DELEGATE MALKUS: You are generous, Mr.  
13 President. You have given him a little time.

14 THE CHAIRMAN: In the absence of objection  
15 and if Delegate Clagett yields the Chairman will permit  
16 the question.

17 DELEGATE CLAGETT: I yield, though one never  
18 knows what is coming.

19 THE CHAIRMAN: Delegate Malkus.

20 DELEGATE MALKUS: The gentleman from Prince  
21 George's County does complement me well. Did you also





1 agree that the General Assembly of Maryland decide how  
2 the judges are to be selected?

3 THE CHAIRMAN: Delegate Clagett?

4 DELEGATE CLAGETT: No, sir.

5 THE CHAIRMAN: Delegate Malkus, do you have  
6 a further question?

7 DELEGATE CLAGETT: And for what reason not?

8 THE CHAIRMAN: Delegate Clagett?

9 DELEGATE CLAGETT: I would reserve that for a  
10 time when I have more time.

11 THE CHAIRMAN: Delegate Malkus.

12 DELEGATE MALKUS: I am sure, Mr. President,  
13 that you will give your colleague and close associate  
14 all the time that he needs, and I would like to have  
15 him express himself now.

16 THE CHAIRMAN: Delegate Clagett, I think it is  
17 the privilege of any member to answer a question to what-  
18 ever extent he chooses. Apparently Delegate Clagett  
19 does not desire to answer further at this time. Delegate  
20 Malkus.

21 DELEGATE MALKUS: Mr. President, may I talk now?



1 THE CHAIRMAN: Yes.

2 DELEGATE MALKUS: I knew as I walked out of this  
3 body that I could be City Halled. I knew that those  
4 that are high and almighty, when they get their heads  
5 together that the little victory, 69 to 60, would be  
6 short-lived, but really and truly Mr. President, this is  
7 not a democratic convention. This convention is run.  
8 Whether I win it or whether I lose it is not going to  
9 shorten my life but I want to say this to everyone of you  
10 here. You have got the courage to spend \$30,000 on a  
11 superior court judge in a little county. One of my  
12 opponents may sometime hope to be one of those judges.

13 If you are going to go ahead and give each  
14 county a superior court judge, this is a convention  
15 basically for the judges and we are going to find this  
16 out, why in the heavens name can't we give the people a  
17 right to be judged on by a judge that knows them well,  
18 rather than a circuit court rider, something that we  
19 gave up in the 1880's, and that is exactly what you are  
20 going to try here and now to establish.

21 There is no court in the state of Maryland



1 more important than a people's court. Maybe to you  
2 lawyers, they get fat out of court cases, and I am a  
3 lawyer and I don't handle this kind of work, but to the  
4 people that know what justice is, it is by the local court,  
5 with the little judges.

6 You want to go ahead and make them ride over  
7 110 miles. As far as I am concerned you can do it, Mr.  
8 President, but if you are interested, Mr. President, in  
9 passing this Constitution, and now I am talking about  
10 a little politics, which as you know a little bit about,  
11 you are going to find out, if you eliminate each county  
12 from having a magistrate's court or a people's court or  
13 under your new phraseology a district court, you are  
14 going to throw that out the window and it will be one  
15 more reason Mr. President, why this convention will not  
16 pass it. Maybe we shouldn't take that into consideration.

17 THE CHAIRMAN: You have one-half minute,  
18 Delegate Malkus.

19 DELEGATE MALKUS: That will be enough. I am  
20 going to live with the people as long as I live in politics  
21 and I am a politician. You may consider yourselves





1 statesmen, but when you take away from us the right to  
2 have a local judge on the most important subject matter,  
3 that a husband and wife cannot get along together, and  
4 put it somewhere in Wicomico County, let them come over  
5 there two or three days a week and decide on our subject  
6 matters; this is not going to cost a lot of money, Mr.  
7 President, and whatever you want, and I am saying this,  
8 and I want the records to show, if it is important enough  
9 to have a superior court judge in every county it is also  
10 important enough to have a people's court judge in  
11 every county. That is what the District court is.

12 THE CHAIRMAN: Any delegate desire to speak  
13 in favor of the motion to reconsider? Delegate Case.

14 DELEGATE CASE: Mr. Chairman, ladies and  
15 gentlemen of the convention, I was not going to speak to  
16 this because I had spoken before, and I am trying to  
17 impose upon myself the rule limiting debate on each  
18 issue to one time, but when Delegate Malkus says that I  
19 must vote for his amendment because if I don't this  
20 Constitution may go down the drain, that annoys me.

21 DELEGATE MALKUS: Will the gentleman yield?



1 DELEGATE CASE: When he says that this is  
2 another thing that may weigh the scales--

3 THE CHAIRMAN: Delegate Case, Delegate Malkus  
4 asks if you will yield to a question.

5 DELEGATE CASE: No, sir.

6 THE CHAIRMAN: Proceed, Delegate Case.

7 DELEGATE CASE: When he says that this is one  
8 thing which will weigh the scales against the passage  
9 of the document, I think we should re-examine our col-  
10 lective consciences.

11 I have no ability to appeal to emotions like  
12 Senator Malkus, but from time to time I can marshall the  
13 facts, and it is the facts I wish each of you would  
14 consider when you think about your vote on the motion  
15 to reconsider.

16 The facts are these: First, there has been  
17 an apparent analogy drawn between the superior  
18 courts and these courts, the district courts, and it is  
19 said that because we are going to have a superior court  
20 in each county we should have a district court in each  
21 county.



1           Let me say first that a superior court in  
2 each county came about, not because of the need of the  
3 judiciary, but for other reasons, and was continued in  
4 the present document because that is the system we now  
5 have. We don't have a district court system, and  
6 therefore the committee started out afresh attempting to  
7 bring to this state the best possible system that it  
8 could have.

9           I can say to you from personal experience that  
10 there are courts in this state under the one judge to  
11 one county rule which are not working full time. This  
12 is just as true as it can be, and therefore the analogy  
13 fails.

14           Secondly, it is suggested that justice will  
15 not be brought to the people, and Delegate Grant quite  
16 properly made an analogy of a person having to go 90  
17 miles back to Cumberland for trial.

18           THE CHAIRMAN: You have one-half minute, Dele-  
19 gate Case.

20           DELEGATE CASE: But this person was not a  
21 resident of Garrett County, but one travelling through.





1 Justice will be brought to the people when these judges  
2 go to them, and bring them justice, and now one final  
3 thought. What we are trying to do here is to make  
4 a court of dignity, one that we can all be proud of, one  
5 that we can all look up to. This is the need in the  
6 lower courts, the courts of limited jurisdiction.

7 The Malkus amendment I submit will place  
8 them once again on the same basis as the justice of the  
9 peace. We will fail in our mission.

10 I ask that the vote to reconsider be adopted.

11 THE CHAIRMAN: Any other delegate desire to  
12 speak in opposition to the vote to reconsider this?  
13 Delegate Key?

14 DELEGATE KEY: Again, Mr. Chairman, I don't  
15 really know. I want to ask Delegate Malkus a question.

16 THE CHAIRMAN: Let me see if someone desires --  
17 well, he is in opposition. Delegate Malkus, do you  
18 yield to a question?

19 DELEGATE MALKUS: Very happily, Mr. President.

20 THE CHAIRMAN: Delegate Key.

21 DELEGATE KEY: Delegate Malkus, you have



1 caused me some concern with your statements. We are  
2 here supposedly setting up a state system of courts,  
3 which means that judges will rotate, or be used in areas  
4 according to case load.

5 Now you are telling me that a judge in  
6 Wicomico County cannot give a fair judgment to a wife-  
7 husband beating in Dorchester, when it is my understanding  
8 that a judge from Dorchester can come to Baltimore City  
9 and give an adequate, just judgment to a murder or a  
10 rape case. Is that what you are telling me?



1 THE CHAIRMAN: Delegate Malkus.

2 DELEGATE MALKUS: Let me say this to you:

3 I was saying that if it is important enough to have a  
4 superior court judge, which is the court higher than the  
5 Almighty who come in very little contact with the people,  
6 if it is important enough to have such a judge in every  
7 county, it is important enough to have a judge in every  
8 county that becomes involved with a real personal subject  
9 matter of each and every person in that court.

10 THE CHAIRMAN: Do you have a further question,  
11 Delegate Key?

12 DELEGATE KEY: Yes.

13 Mr. Chairman, I would like to ask Delegate  
14 Mudd a question, please.

15 THE CHAIRMAN: Delegate Mudd, do you yield to  
16 a question?

17 DELEGATE MUDD: Yes.

18 THE CHAIRMAN: Delegate Key.

19 DELEGATE KEY: Delegate Mudd, does this recom-  
20 mendation as your committee has outlined it, does it  
21 leave to the legislature or the appeals judge, for that





1 matter, the opportunity to assign the superior court  
2 judge that is resident in the county to try district court  
3 cases, perhaps?

4 THE CHAIRMAN: Delegate Mudd.

5 DELEGATE MUDD: Yes.

6 DELEGATE KEY: Thank you.

7 THE CHAIRMAN: Does any other delegate desire  
8 to speak in favor of the motion to reconsider?

9 Delegate Marion.

10 DELEGATE MARION: Mr. Chairman, I don't think  
11 I can appeal to the emotion of this body. I hope I might  
12 appeal to your reason.

13 I support the motion to reconsider and hope  
14 that when it is reconsidered that we will vote down Amend-  
15 ment 18.

16 There is nothing in section 5.10, as reported by  
17 the Committee on the Judicial Branch, which would pre-  
18 vent the legislature from establishing a district contiguous  
19 with the county, thereby requiring, if the legislature saw  
20 fit, that there be a district court judge resident in each  
21 county; but all of the evidence we heard from those people



1 most familiar with the problems of caseload and for the  
2 best court administration told us, not just the study of  
3 the Maryland State Bar Association, but the study of the  
4 director of the Institute for Judicial Administration;  
5 Mr., Fred Inverness, Director of the Administrative Office  
6 of the Courts, indicated that there was not now a need for  
7 a district court judge in each county.

8 To mandate that into the Constitution would  
9 be unwise when the legislature, if they so desired, could  
10 provide it next year, five years from now, or at any time  
11 thereafter.

12 THE CHAIRMAN: Delegate Adkins.

13 DELEGATE ADKINS: Mr. Chairman and ladies  
14 and gentlemen of the Convention:

15 I rise with considerable reluctance in this  
16 matter, because I have wrestled with it in my own mind since  
17 the report of the Case Commission of the Bar Association  
18 was first given at Atlantic City at the Convention.

19 I am just as concerned about efficiency in the admini-  
20 stration of justice as any member of the majority. I am  
21 just as concerned with keeping the expenses of the



1 government at the barest possible minimum in order to do  
2 an effective job, as any member of this Assembly. But I  
3 have a more overriding interest, and that is to see that  
4 justice is properly served to the people of this State,  
5 and I suggest to this Convention that justice is not a  
6 matter of statistics. It is not a matter of caseload. It  
7 is not a matter of whether or not a judge is busy full time  
8 or part time.

9 I concede that all of these matters are signifi-  
10 cant.

11 The most important single question here is what  
12 type of courts can we device in which the people will have  
13 the greatest confidence.

14 Law can only be administered by a court  
15 system in which the people have confidence. The lowest  
16 system of the lowest court in this four-tier system is  
17 the court which has the most direct influence, the most  
18 direct image making power to the people of our State, and  
19 it is for that reason, and for that reason alone that I  
20 feel it is absolutely critical. I finally come to this  
21 conclusion, reluctantly, I might say, that we should have





1 in each of our counties a judge who is a resident of that  
2 county, not necessarily because he knows the mores of  
3 the community any better, as Mr. Smith has suggested, but  
4 simply because he will, by virtue of being a neighbor,  
5 instill in the people of that county a sense of fairness  
6 and dignity of the court system.

7 It is important that the people feel that they  
8 are being judged by their peers. That is a long, old,  
9 established Anglo-Saxon rule. It is, I suggest, a matter  
10 of considerable importance that a judge be so viewed  
11 in the county where he is attempting to administer justice.

12 Despite the statistics, I ask you to defeat the  
13 motion to reconsider.

14 THE CHAIRMAN: Delegate Byrnes.

15 DELEGATE BYRNES: Mr. Chairman, I would like  
16 to direct a question if I could to Chairman Mudd, if he  
17 would yield.

18 THE CHAIRMAN: Let me first inquire,  
19 for what purpose does Delegate Frederick rise?

20 DELEGATE FREDERICK: If possible, I would like  
21 to ask a question of the sponsor of the motion to recon-  
sider.



1 THE CHAIRMAN: Delegate Mudd do you yield to  
2 a question from Delegate Byrnes?

3 DELEGATE MUDD: Yes, Mr. Chairman.

4 THE CHAIRMAN: Delegate Byrnes.

5 DELEGATE BYRNES: Did the Committee con-  
6 template the possibility that we would decide, the  
7 Committee of the Whole, that a judge would be paid, say,  
8 \$30,000 for doing very definitely part time work during  
9 the week and would be paid the same amount as a judge  
10 working full time and perhaps overtime in the urban areas  
11 would be paid, the same amount of money? Did you have  
12 a uniform salary scale in mind, or did you consider the  
13 possibility of adjusting for less work performed?

14 THE CHAIRMAN: Delegate Mudd.

15 DELEGATE MUDD: Our committee assumed that  
16 every judge appointed in the four-tier system would be a  
17 full time lawyer-judge, a legal judge, with no part time  
18 judges. We did not consider in any detail the matter of  
19 salaries, except that we felt it would be uniform through-  
20 out each tier. There was no suggestion in our committee  
21 that I recall that a district court judge would necessarily



1 receive \$30,000, or that a superior court judge would re-  
2 ceive that much. All that we sought to accomplish, Delegate  
3 Byrnes, was full-time judges at all four levels, but prob-  
4 ably anticipating some adjustment of the salary scale  
5 within the distinction between the judges in the different  
6 tiers, and \$30,000 as a salary for a district judge was  
7 never mentioned.

8 THE CHAIRMAN: Delegate Byrnes.

9 DELEGATE BYRNES: Would you say that if this  
10 amendment were adopted that your intent to establish full  
11 time judges at all four levels would be defeated?

12 DELEGATE MUDD: We left it to the expression  
13 of the legislature, because we thought that the need might  
14 change from time to time, especially in view of the  
15 rather surprising population projection, that in western  
16 Maryland and on the Eastern Shore some of the projections  
17 were a continuing reduction of population, rather than an  
18 increase in population.

19 Therefore, to mandate in the Constitution the  
20 requirement that there be a resident district judge in every  
21 county could really create over the long run less efficient





1 use of manpower than the legislature might in its wisdom  
2 provide for by changing district lines from time to time.

3 THE CHAIRMAN: Delegate Byrnes.

4 DELEGATE BYRNES: May I speak in favor of the  
5 motion at this point?

6 THE CHAIRMAN: You may.

7 DELEGATE BYRNES: I would just like to point out  
8 to the body if I could that I think we are potentially  
9 talking about many hundreds of thousands of dollars. It  
10 was pointed out earlier that there are some 13 counties who  
11 do not have sufficient business to warrant full time judi-  
12 cial activity.

13 Now, I think that this Convention was not called  
14 to make judgments of this kind. If we are going to  
15 spend this sum of money I think we are in the wrong business  
16 and we should call ourselves the General Assembly.

17 Delegate Malkus has made the point on many occa-  
18 sions that we are talking about expense, and Delegate Marion  
19 has made the point that the language as it now reads in 5.10  
20 makes it clear that the General Assembly can make the judg-  
21 ment, that there should be a resident district judge in each



1 county, but I think if we make the judgment here we are not  
2 only making that judgment, but we are also making the judg-  
3 ment that the taxpayers are going to be paying maybe an  
4 additional couple of hundreds of thousands of dollars, and  
5 I don't think it is our prerogative to do so.

6 THE CHAIRMAN: For what purpose does Delegate  
7 Malkus rise?

8 DELEGATE MALKUS: The gentleman has some time  
9 left. Does he yield?

10 DELEGATE BYRNES: Certainly.

11 DELEGATE MALKUS: Did I understand you to say  
12 there were 13 counties here that would probably not be en-  
13 titled to have a resident district court judge?

14 THE CHAIRMAN: Delegate Byrnes.

15 DELEGATE BYRNES: I was recalling, perhaps  
16 erroneously, the comments made by the committee chairman  
17 to the effect that there was not sufficient business in so  
18 many counties to justify full time judicial activity.  
19 Maybe 13 is an erroneous figure.

20 THE CHAIRMAN: Delegate Malkus.

21 DELEGATE MALKUS: Will you then give me the



1 names of those counties that you are talking about?

2 THE CHAIRMAN: Delegate Byrnes.

3 DELEGATE BYRNES: I could imagine what they were,  
4 but I would like to refer, rather defer to the chairman  
5 of our committee.

6 THE CHAIRMAN: Delegate Mudd, can you furnish  
7 the information requested by Delegate Malkus?

8 DELEGATE MUDD: Mr. Chairman, I do not recall  
9 using the figure 13. My information was obtained from the  
10 Case Report, and I do not know whether that chart is im-  
11 mediately available; but it was our conclusion from the  
12 facts and figures therein contained as to caseload, on page  
13 15, that there were many counties, particularly on the  
14 Shore, and Garrett County, where the annual caseload would  
15 not appear to justify the time of a full time judge.

16 THE CHAIRMAN: Delegate Clagett, will you  
17 yield to a question from Delegate Frederick?

18 DELEGATE CLAGETT: Yes, sir.

19 THE CHAIRMAN: Delegate Frederick.

20 DELEGATE FREDERICK: Delegate Clagett, if you  
21 will answer a question for a confused delegate:





1 We spent many minutes listening to arguments, pro and con,  
2 about Amendment No. 18, and my question is simply this:  
3 Do you have any additional evidence in support of the  
4 opposition to Amendment 18; or, second, are we just asking  
5 for another crack to knock it down?

6 THE CHAIRMAN: Delegate Clagett.

7 DELEGATE CLAGETT: I would like to answer this  
8 in this manner: That reference to section 5.29  
9 clearly indicates that where a resident judge is needed  
10 in any county, the court, by rule, the Court of Appeals by  
11 rule can always assign to sit temporarily in any court  
12 a judge, whether he be a superior court judge or another  
13 district court judge.

14 I believe that that is an additional matter  
15 that is completely relevant here, and may have been over-  
16 looked, and therefore would be, I would say, something new.

17 THE CHAIRMAN: Delegate Frederick.

18 DELEGATE FREDERICK: Would the delegate answer  
19 me just one more question? Did you know of section  
20 5.29 during the recent debate?

21 THE CHAIRMAN: Delegate Clagett.



1 DELEGATE CLAGETT: Yes, sir, I did; but I am  
2 afraid that some of the other delegates who voted in favor of  
3 Delegate Malkus' motion may not have.

4 THE CHAIRMAN: Delegate Frederick.

5 DELEGATE FREDERICK: You feel then that it was  
6 omitted and nobody brought this problem before the body?

7 THE CHAIRMAN: Delegate Clagett.

8 DELEGATE CLAGETT: Yes, sir, I do feel that it is  
9 quite important and relevant to this question, particularly  
10 in the light of the point raised by Delegate Adkins, where  
11 the effort is to raise the status of the judiciary and to  
12 make justice available in every county.

13 I say here that with a superior court judge  
14 resident in that county, who may be assigned to the district  
15 court responsibilities, if there is need for them, that  
16 answers that question.

17 THE CHAIRMAN: Delegate Frederick.

18 DELEGATE FREDERICK: Except just one thing,  
19 Delegate Clagett.

20 THE CHAIRMAN: Are you asking a question?

21 DELEGATE FREDERICK: Yes.



1 THE CHAIRMAN: Are you debating?

2 DELEGATE FREDERICK: Far be it from me to get  
3 entangled. I feel like a lay man in a jungle with a sling  
4 shot.

5 Your reference very clearly brings about, the  
6 only thing that is also confusing me, that Delegate Adkins  
7 spoke after you reconsidered, not before; so again  
8 I am confused. You bring reference to Delegate Adkins'  
9 speech, but that was after you made the amendment to re-  
10 consider, not before.

11 THE CHAIRMAN: What is the question, Delegate  
12 Frederick?

13 DELEGATE FREDERICK: I am confused. I would  
14 like to ask him.

15 THE CHAIRMAN: Delegate Clagett, you have slightly  
16 less than 30 seconds to end the confusion.

17 DELEGATE CLAGETT: I will have to stand on the  
18 fact that I hope that your confusion with more consideration  
19 will clear, and you will vote in the right direction.

20 THE CHAIRMAN: For what purpose does Delegate  
21 Fox rise?





1 DELEGATE FOX: I would like to ask Delegate  
2 Mudd a question, if I may.

3 THE CHAIRMAN: Delegate Mudd, do you yield to  
4 a question?

5 DELEGATE MUDD: Yes, Mr. Chairman.

6 THE CHAIRMAN: Delegate Fox.

7 DELEGATE FOX: Delegate Mudd, if there were a  
8 resident county, or a district judge resident in every  
9 county, and if there were not sufficient judicial business  
10 to occupy him in the county, could he not then be assigned to  
11 other places in the State where it would be necessary to  
12 have additional district judges?

13 THE CHAIRMAN: Delegate Mudd.

14 DELEGATE MUDD: Yes, that is entirely possible  
15 under the assignment powers provided for in section 5.29,  
16 as I recollect.

17 THE CHAIRMAN: Delegate Fox.

18 DELEGATE FOX: So there would not be any reason  
19 to assume that these judges would be part-time, then, would  
20 there?

21 THE CHAIRMAN: Delegate Mudd.



1 DELEGATE MUDD: No, there is no contemplation  
2 in our recommendation that there will be any part time  
3 judge at the superior level or at the district level, but  
4 that those judges at either level who may not be entirely  
5 occupied with the business in the county where he may reside  
6 may be assignable to a jurisdiction where the caseload is  
7 greater.

8 THE CHAIRMAN: Delegate Fox.

9 DELEGATE FOX: And therefore he would not be  
10 part time?

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: If you mean part time in occu-  
13 pation, no. A judge could be a part time judge in one  
14 political subdivision and part time in another.

15 THE CHAIRMAN: Delegate Sybert.

16 DELEGATE SYBERT: Mr. Chairman, I rise in  
17 opposition to the motion to reconsider.

18 I think it may be significant, but those who  
19 spoke in favor of the motion to reconsider are from Balti-  
20 more City, or the large metropolitan counties. Most dele-  
21 gates do not know, since they do not live in the small



1 county, the difficulties, the inconvenience of obtaining  
2 justice. A lawyer or litigant must go 10, 20, 70 miles  
3 and plus that in a round trip, in order to see a district  
4 court judge.

5 I submit that justice and even law enforcement  
6 will in some cases be delayed if we don't have a district  
7 court judge residing and holding court in each district.

8 I subscribe entirely to everything that Delegate  
9 Adkins said in his well reasoned and very persuasive address.

10 I think the question boils down to one of avail-  
11 ability, and ready justice. As far as cost is concerned,  
12 I can't see how it will cost much if any more to have  
13 a district court judge residing in the county, along with  
14 the commissioner, and the necessary clerks over and  
15 above -- perhaps it will cost more than the present system  
16 where you have one or more magistrates or peoples courts  
17 and the clerks and such other people as they have at  
18 present.

19 I submit, Mr. President, that we have already  
20 spent 40 minutes on this motion to reconsider. I suggest  
21 that the delegates by an even more resounding vote than  
they have on Amendment 18 turn back this





1       amendment to reconsider the question.

2               THE CHAIRMAN: Does any other delegate  
3       desire to speak in favor of the motion to reconsider?

4               Delegate Ulrich.

5               DELEGATE ULRICH: Mr. Chairman, I have a  
6       question of Mr. Mudd.

7               THE CHAIRMAN: Delegate Mudd, do you yield  
8       to a question?

9               DELEGATE MUDD: Yes, Mr. Chairman.

10              THE CHAIRMAN: Delegate Ulrich.

11              DELEGATE ULRICH: Delegate Mudd, would it not  
12       be true that the district judges will be sent to another  
13       district to hear cases when they are not busy in their own  
14       court, and by doing so, would not they be trying cases for  
15       people that they didn't know, either? It seems to be the  
16       consensus of some delegates that they want to have a judge  
17       that knows their people, but would not they be transfer-  
18       able, anyway?

19              THE CHAIRMAN: Delegate Mudd.

20              DELEGATE MUDD: You are entirely correct.

21              THE CHAIRMAN: Does any other delegate desire



1 to speak in favor of the amendment?

2 Delegate Weidemeyer.

3 DELEGATE WEIDEMEYER: Mr. President --

4 THE CHAIRMAN: I should have said in favor of  
5 the motion to reconsider.

6 DELEGATE WEIDEMEYER: I am opposed to the motion  
7 to reconsider.

8 THE CHAIRMAN: Does anyone desire to speak in  
9 favor of the motion to reconsider?

10 Delegate Bushong.

11 DELEGATE BUSHONG: I hate to take exception  
12 with my good friend Senator Malkus, but it seems to me  
13 that this Convention, having given every county in the  
14 State a superior court judge, and knowing something about  
15 the caseload in some of these small counties, and now in  
16 return to give them a district judge, seems to me that we are  
17 just going too far with judges, and the thing is getting out  
18 of hand.

19 If these judges are needed, they can get them;  
20 but if they are not needed, why have them?

21 I believe that the district court judge can go



1 into Garrett County twice a week and any of these other  
2 small counties, and do a good job for them; but on the  
3 other hand, to have him sitting in Garrett County every  
4 day in the week is somewhat ridiculous to me, and I think  
5 that this Convention treated the small counties well when  
6 they gave them a superior court judge, and for that reason  
7 I am going to vote for the reconsideration of this amendment.

8 THE CHAIRMAN: Does any other delegate desire  
9 to speak in opposition?

10 Delegate Bennett.

11 DELEGATE BENNETT: A parliamentary inquiry:  
12 I take it that a motion that the Committee of the Whole  
13 rise now is in order. If I should make that motion and it  
14 should pass, would this motion to reconsider be pending  
15 business when the Committee on the Whole reconvenes?

16 THE CHAIRMAN: The Chair thinks so.

17 DELEGATE BENNETT: Mr. Chairman, I move that  
18 the committee now rise.

19 THE CHAIRMAN: May I suggest -- I will put the  
20 motion -- may I suggest to the delegate that we have  
21 present nearly all of the Convention at this time, and have





1 spent some 40 or 45 minutes in debating this issue. Is  
2 the motion to rise seconded?

3 (Whereupon, the motion was seconded.)

4 THE CHAIRMAN: The Chair calls on Delegate  
5 Powers for any comment as Chairman of the Committee on  
6 Calendar and Agenda.

7 DELEGATE POWERS: Mr. Chairman, it would appear  
8 that in a very few more minutes the entire matter  
9 would be disposed of, and it would be desirable to main-  
10 tain the continuity. I am opposed to the motion.

11 THE CHAIRMAN: For what reason does Delegate  
12 Murray rise?

13 DELEGATE MURRAY: To speak in opposition to the  
14 motion.

15 THE CHAIRMAN: The motion to rise?

16 DELEGATE MURRAY: No, sir.

17 THE CHAIRMAN: The motion to rise has prece-  
18 dence.

19 Are you ready for the question? The question  
20 arises on the motion that the Committee of the Whole rise.  
21 A vote Aye is a vote in favor of the motion to rise. A



1 vote No is a vote against. Cast your votes.

2 Has every delegate voted: Does any delegate  
3 desire to change his vote?

4 For what purpose does Delegate Weidemeyer rise?

5 DELEGATE WEIDEMEYER: To speak in opposition  
6 just as soon as the Chair has ruled that the motion to  
7 rise has failed.

8 THE CHAIRMAN: The clerk will record the  
9 vote.

10 There being 18 votes in the affirmative and  
11 107 in the negative, the motion to rise fails.

12 The Chair recognizes Delegate Weidemeyer to  
13 speak in opposition to the motion to reconsider.

14 DELEGATE WEIDEMEYER: Mr. President, Members  
15 of the Convention:

16 Sometimes when we arrive at conclusions we have  
17 to take a lot of statistics and work on them, and I am afraid  
18 that when section 5.10 was drafted, probably the Case  
19 statistics came into strong play; but I would say that in  
20 this instance for service to the public that the Case  
21 statistics present a very poor case, and I think that we



1 have overlooked one salient factor in all of this: that  
2 the district court judge is not there for the purpose of con-  
3 serving money or placed just to conserve money, but he is  
4 placed there to serve the people.

5 For example, if they should decide that by  
6 statistics four counties on the Eastern Shore would be  
7 entitled to two district judges, it stands to reason that  
8 those two district judges serving the four counties could  
9 not be in all four counties all of the time. A man from  
10 Montgomery County or Baltimore County or Anne Arundel  
11 or Prince Georges, or even Baltimore City, going over to  
12 Ocean City, and he speeds up in Wicomico, and he is picked up  
13 in Wicomico County and is charged with speeding, then he  
14 feels he is falsely charged and wants to defend the case,  
15 and he says to the officer, "Well, I can come back and  
16 stand trial on Thursday; I can come back to Wicomico County;"  
17 and the officer says, "Well, you can come back on Thursday,  
18 but you will have to drive 50 miles more down into Somerset  
19 County, or over into Worcester County."

20 So that man, if he wants to, has to drive the  
21 additional 50 miles, and when the officer tells him that,





1 it is because we placed it in the Constitution that each  
2 county should not have its district judge.

3 That man is going to say to the officer, confound  
4 that Constitution.

5 And I say this -- and I don't want to be rough  
6 about the things that Delegate Malkus pointed out, here --  
7 but I would say this, and time and time again I have no-  
8 ticed it, that some of us feel because we are elected to a  
9 Constitutional Convention that we are ordained to see all  
10 of the things and give the people what we think they ought  
11 to have.

12 I think we have got to be close to the  
13 people and give them what they need, and the service they  
14 need.

15 I have said many times during this Convention  
16 that the only person that I know who is ordained to do some-  
17 thing for an individual and make them take it is the  
18 mother who gives a sick baby castor oil.

19 Now, we cannot treat the public that way. We  
20 have got to give them service in this thing, and I think  
21 that if we give a district court judge who is nothing more



1       than a trial magistrate -- now mind you, he is going to  
2       handle the same cases. You can call him district court  
3       judge, peoples court judge, and put a robe on him, but  
4       he is going to do and handle the same cases that those trial  
5       magistrates handled before.

6               THE CHAIRMAN: You have one-quarter minute,  
7       Delegate Weidemeyer.

8               DELEGATE WEIDEMEYER: And when in recent years  
9       have we had a county without its trial magistrate?

10              THE CHAIRMAN: Does any delegate desire to  
11       speak in favor of the motion to reconsider?

12              Delegate Schneider.

13              DELEGATE SCHNEIDER: Mr. Chairman, I think the  
14       issue is being clouded here, and being cast in an emo-  
15       tional state of a question of yes or no for one district  
16       court judge for the county. That is not the question be-  
17       fore us. The question is whether we should here decide  
18       the merits of the Case report versus the delegates who say  
19       there is a need for one district court per county; and whethe  
20       we here should decide whether Delegate Grant's county is  
21       so large that a man cannot drive from one end to the other



1 without being severely inconvenienced, and whether there  
2 are not perhaps some counties elsewhere in the State where  
3 the driving distance between points in the county is short.

4 The question here is whether we want to make this  
5 decision now or whether we want to leave it to the legis-  
6 lature. A vote yes, to reconsider, and a vote no on  
7 amendment 18, to leave it to the legislature; whereas Sena-  
8 tor Malkus could there present his case.

9 Perhaps some counties would get a judge. Per-  
10 haps Garrett County would get a judge and perhaps some  
11 of the other counties where the distance is close wouldn't  
12 get a judge. We wouldn't mandate a district judge  
13 per county in the Constitution, and I would hope you would  
14 vote Yes, and then No on the motion 18, Amendment 18.

15 THE CHAIRMAN: Delegate Della.

16 DELEGATE DELLA: Mr. Chairman, I believe the  
17 motion to reconsider is before the body, and I don't think  
18 Amendment 18 is, and all we are doing is hashing over  
19 Amendment 18.

20 THE CHAIRMAN: This is correct, but the Chair  
21 rules that discussion of the motion to reconsider a vote





1 by which the amendment was passed would be proper to dis-  
2 cuss any matters pertaining to the amendment.

3 DELEGATE DELLA: The merits if Amendment 18?

4 THE CHAIRMAN: Hopefully we wouldn't have to  
5 rediscuss them.

6 Are you ready for the question?

7 Delegate Key.

8 DELEGATE KEY: I would like to say a few things  
9 in favor of this recommendation to reconsider, because I  
10 think here we need to decide whether Amendment 18, whether  
11 we are really for a statewide system of courts.

12 Now, in asking my questions I had a very good  
13 reason. As you know, the counties, as they like to tell us,  
14 are small. They are less sophisticated, and therefore  
15 they need their own to judge them. This is true. That is  
16 why we have juvenile laws now that make a juvenile in a  
17 county at age 16 and a juvenile in Baltimore City at --  
18 I am sorry, vice-versa, a juvenile in the county is a  
19 juvenile at the age 18, and in the City he is an adult at  
20 age 16.

21 This means that crimes supposedly in the city



1 are created by more sophisticated people. If you are saying  
2 that your county people are less sophisticated, and need  
3 hometown people to try them, then I say that they are not  
4 sophisticated, and need hometown people to try them; then  
5 I say that they are not sophisticated enough to come up  
6 to Baltimore City on this statewide system and try our  
7 people who have more sophisticated crime.

8 Now, you are either for a state system, gentle-  
9 men and ladies, or you are not; and I want you to tell me  
10 by voting on Amendment 18 whether I should be for it,  
11 and give up a just court system in Baltimore City, or be  
12 for a state system and depend on the legislature to decide  
13 who needs the judges.

14 THE CHAIRMAN: Are you ready for the question?

15 For what purpose does Delegate Storm rise?

16 DELEGATE STORM: I was just going to say one  
17 sentence which would have taken shorter time than this  
18 apology, but I was just going to say the statistics  
19 do not really cover.

20 When I was a trial magistrate I worked a lot  
21 of times and didn't put it down. You are



1 a family counsellor; on this level of court you do a lot  
2 of service to people that never get in the statistics, and  
3 keep things out of formal court.

4 THE CHAIRMAN: That is a mighty long sentence,  
5 Delegate Storm.

6 For what purpose do you rise, Delegate  
7 Murray?

8 DELEGATE MURRAY: Basically to speak against  
9 the motion to reconsider. However, I find myself in the  
10 peculiar position of rather wishing that you would recon-  
11 sider it, in order that you may confirm your previous vote.  
12 I have no desire to pass through the door and then lock it  
13 against you. If you want to reconsider, fine; but the way  
14 this discussion has gone, the debate has been made before  
15 the reconsideration, and if this is going to be the situation  
16 I want to repeat my plea for the district judge, and for  
17 my part, I would rather be without the superior judge than  
18 the district judge. I merely say this to emphasize what I  
19 feel is the importance of the judge of first jurisdiction.

20 THE CHAIRMAN: Are you ready for the question?

21 DELEGATE CLAGETT: Mr. Chairman.





1 THE CHAIRMAN: Delegate Clagett.

2 DELEGATE CLAGETT: Mr. Chairman, a glance  
3 at that board a moment ago indicated that it was all red.  
4 That indicates that there is a boiling point in this de-  
5 liberation. On this question, I suggest to you that  
6 careful consideration is what is required. Sometimes it  
7 takes from the boiling pot burns, and that is exactly what  
8 could be the result of this action. Carefully consider  
9 it, and if it is your considered vote, then cast it one  
10 way or the other.

11 THE CHAIRMAN: The question arises on the motion  
12 to reconsider the vote by which Amendment 18 was adopted.  
13 A vote Aye is a vote to reconsider. A vote No is a vote  
14 against. If the motion prevails, Amendment 18 will be  
15 again before you. If the motion fails, Amendment 18 remains  
16 adopted.

17 A vote Aye, a vote to reconsider; a vote No,  
18 a vote against. Cast your votes.

19 Has every delegate voted? Does any delegate  
20 desire to change his vote? The Clerk will record the vote.

21 There being 58 votes in the affirmative and 72



1 votes in the negative, the motion to reconsider fails.

2 The Chair has no other amendments to section  
3 5.11. Are there any other amendments?

4 The Chair has no knowledge of any other amend-  
5 ments to section 5.01 through 5.11. Are there such amend-  
6 ments?

7 The Chair hears none. We have therefore con-  
8 cluded consideration of the first portion on the debate  
9 schedule dealing with court structure.

10 The Chair recognizes Delegate Powers.

11 DELEGATE POWERS: Mr. Chairman, I move the  
12 Committee of the Whole rise and report.

13 (THE CHAIRMAN: Is there a second.

14 (Whereupon, the motion was seconded.)

15 THE CHAIRMAN: All in favor, signify by saying  
16 Aye; contrary, No.

17 The Ayes have it. It is so ordered.

18 (The mace was replaced by the Sergeant at Arms.)

19 (Whereupon, at 12:55 the Committee of the Whole  
20 rose, and the Convention reconvened.)

21 THE PRESIDENT: The Convention will please come

U. 218 11113. 1-1-1888

1 to order.

2 On behalf of the Committee of the Whole the  
3 Chair reports that it has had under consideration Committee  
4 Recommendation JB-1; that it has concluded consideration  
5 of sections 5.01 to 5.11, still has the recommendation under  
6 consideration, and desires leave to sit again.

7 Are there any announcements necessary to be  
8 made before recess?

9 (No response.)

10 THE PRESIDENT: If not, the Chair recognizes  
11 Delegate Powers.

12 DELEGATE POWERS: Mr. President, I move we  
13 recess until 2:30.

14 THE PRESIDENT: All in favor, signify by saying  
15 Aye; contrary, No.

16 The Ayes have it. It is so ordered.

17 (Whereupon, at 12:56 p.m., the Convention was  
18 recessed, to reconvene at 2:30 p.m. of the same day.)  
19  
20  
21

100  
90  
80  
70  
60  
50  
40  
30  
20  
10  
0



A F T E R N O O N S E S S I O N

- - -

November 17, 1967 - 2:30 p.m.

THE PRESIDENT: The Sergeant at Arms will clear the aisles and close the doors.

The Convention will please come to order.

Roll call.

(Whereupon, a roll call was taken.)

THE PRESIDENT: Have all delegates answered roll call?

The Clerk will record the roll call.

We will revert to consideration of Committee reports.

Committee of the Whole Report No. 7. The Clerk will read the report.

MR. QUILLEN: Report of the Committee of the Whole No. 7. This report covers matters in General Order No. 8.

A report on Committee Recommendation LG-1 (Definitions, Establishment of Counties, Structure of County Government, Change of Structure of County Government,

11

1 Powers of Counties, General Application of Laws, Existing  
2 Municipal Corporations, New Municipal Corporations and  
3 Civil Units, Additional Powers of Municipal Corporations,  
4 Establishment of Multi-County Governmental Units,  
5 Financing of Intergovernmental Authorities, Credit Limi-  
6 tations of Local Governments, Intergovernmental Cooperation  
7 and Agreements).

8 THE PRESIDENT: The report has heretofore been  
9 referred to the Committee on Style, Drafting and Arrange-  
10 ment. I call your attention that attached to the report  
11 is a rewrite of the entire Committee Recommendation LG-1,  
12 although the only section amended was Section 7.10. We  
13 thought it best to give you the entire provision.

14 Committee Recommendation GP-6. The Clerk will  
15 read the recommendation.

16 MR. QUILLEN: Committee Recommendation No. GP-6 by  
17 the Committee on General Provisions, Elroy G. Boyer,  
18 Chairman.

19 A Recommendation that the constitution include  
20 an article entitled "Education" to read as follows:

21 Section 1. The General Assembly shall provide



1 for a statewide system of public education and for other  
2 public educational institutions that are desirable or  
3 necessary for the intellectual, cultural and occupational  
4 development of the residents of this state.

5 Section 2. The General Assembly shall provide  
6 by law for equal educational opportunities for all  
7 residents.

8 Section 3. The school fund of the State shall  
9 be kept inviolate and appropriated only to the purposes  
10 of education.

11 Section 4. The General Assembly shall maintain  
12 and support a statewide system of free public schools  
13 as defined by law. There shall be a state board of  
14 education, composed of members representing geographic  
15 areas and appointed by the governor in accordance with  
16 law. The state board of education shall formulate policy and  
17 exercise control and direction over the public school  
18 system and shall perform such other duties as may be  
19 assigned to it. The board shall appoint a state superin-  
20 tendent of schools who shall be its executive and pro-  
21 fessional officer.

U. S. DEPARTMENT OF AGRICULTURE



1           Section 5.. Each local school system shall be  
2 managed by a local school board appointed by the governor  
3 or elected insuch manner as provided by law;.provided that  
4 all local school boards shall be permitted to retain their  
5 present method of selection but should there be a change  
6 proposed in the method presently employed in selecting such  
7 local school board or the existing fiscal authority of  
8 such board as it shall be constituted at the effective  
9 date of this article, such change or changes shall be  
10 first subjected to a referendum for the approval of the  
11 voters of such system or systems to be affected.

12           Section 6. The state university or universities  
13 and the system of state colleges shall be managed respec-  
14 tively by a board of regents of the state university or  
15 universities and a board of trustees of the state colleges  
16 appointed by the governor in accordance with law. The  
17 board of regents of the state university or universities  
18 and the board of trustees of the state colleges, respectively,  
19 shall have general supervision of their institution or  
20 institutions and control and direction of all expenditures  
21 of the funds of their institution or institutions.

[illegible]

1           Section 7. The public community colleges,  
2 by whatever name they may hereafter be known, shall be  
3 controlled by local boards in accordance with law and  
4 shall be under the general supervision of a state board.  
5 The local board of trustees shall have general super-  
6 vision of the local institution or institutions and the  
7 control and direction of all expenditures from the insti-  
8 tution's funds.

9           Section 8. There shall be a state advisory  
10 council of higher education, in accordance with law,  
11 to assist in the coordinating of programs of higher  
12 education in this state.

13           Section 9. The General Assembly shall provide  
14 for and maintain by law a statewide system of public  
15 libraries.

16           THE PRESIDENT: Committee Recommendation GP-6 is  
17 referred to the Committee of the Whole.

18           I understand the recommendation has been  
19 printed and distributed. Accompanying it is Committee  
20 Memorandum GP-6, which has not yet been printed, will  
21 probably not be printed today, but will be available

21. 212 211 210 209 208 207 206 205 204 203 202 201 200 199 198 197 196 195 194 193 192 191 190 189 188 187 186 185 184 183 182 181 180 179 178 177 176 175 174 173 172 171 170 169 168 167 166 165 164 163 162 161 160 159 158 157 156 155 154 153 152 151 150 149 148 147 146 145 144 143 142 141 140 139 138 137 136 135 134 133 132 131 130 129 128 127 126 125 124 123 122 121 120 119 118 117 116 115 114 113 112 111 110 109 108 107 106 105 104 103 102 101 100 99 98 97 96 95 94 93 92 91 90 89 88 87 86 85 84 83 82 81 80 79 78 77 76 75 74 73 72 71 70 69 68 67 66 65 64 63 62 61 60 59 58 57 56 55 54 53 52 51 50 49 48 47 46 45 44 43 42 41 40 39 38 37 36 35 34 33 32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1

1 for you Monday.

2 Minority Report EB-1(A).The Clerk will read  
3 the report.

4 MR. QUILLEN: Minority Report No. EB-1(A), by  
5 Delegates Buzzell, Dorsey, Finch, James, Mason, Smith,  
6 Storm, Sybert and Tawes of the Committee on the Executive  
7 Branch.

8 A MINORITY REPORT concerning Committee Report  
9 No. EB-1 in which the Committee on the Executive Branch  
10 voted 11-9 not to provide for a Board of Public Works  
11 in the Constitution.

12 Governor Agnew, in his address to the Consti-  
13 tutional Convention stated: "In my opinion, the Board  
14 of Public Works should be continued but reconstituted. The  
15 Board provides a forum for public scrutiny and presents an  
16 opportunity for the expression of legislative views  
17 on significant decisions. I believe the State Treasurer,  
18 an adjunct of the legislative arm, should continue as the  
19 representative of the General Assembly." ..

20 At the present time the Board of Public Works  
21 has many important responsibilities, most of them statutory,

100  
90  
80  
70  
60  
50  
40  
30  
20  
10  
0



1 including:

2 Supervision of the creation of state debt, the  
3 terms and conditions thereof and the advertising and sale  
4 of bonds;

5 Approval of all contracts for expenditures from  
6 the proceeds of any loans authorized by the General  
7 Assembly;

8 Supervision of the expenditure of all sums  
9 appropriated for the acquisition of land, building,  
10 equipment, new construction and other capital expenditures  
11 except those in connection with state roads and bridges;

12 Authority over all state property or rights,  
13 having the power to transfer and dispose of state real  
14 or personal property;

15 Authority to borrow upon the credit of the  
16 state and to issue tax anticipation notes within legally  
17 specified limits;

18 Supervision of all lump sum appropriations not  
19 detailed by law;

20 Supervision of the administration of the General  
21 Emergency Fund, and the establishment of the State

100  
90  
80  
70  
60  
50  
40  
30  
20  
10  
0

1 Property Tax rate.

2 At the present time the Board is composed of only  
3 three members -- the Governor, the State Comptroller,  
4 and the State Treasurer. It meets formally each month  
5 and passes on three separate agenda, one submitted by its  
6 Secretary, one by the Budget Director, and one by the  
7 Director of the Department of Public Improvements.

8 We believe that the Board exercises an immensely  
9 important function in state government, and that it  
10 should continue to be provided for in our Constitution.  
11 At the same time we recommend that the size of the Board  
12 be increased to five -- adding two appointees of the  
13 Governor (possibly the Budget Director and the Director  
14 of the Department of Public Improvements.)

15 We also feel that the General Assembly should  
16 specify the duties of this Board so that it is concerned  
17 with matters of only the most important public consequence,  
18 permitting the Board to delegate minutia to appropriate  
19 departments.

20 The majority's only important argument for the  
21 abolition of this Board is that since the Comptroller and

University of Maryland Library  
College Park, Md.

University of Maryland Library  
College Park, Md.

U. of M. LIBRARY  
COLLEGE PARK, MARYLAND

1 Treasurer are not responsible to the Governor, he cannot  
2 control the actionsof the Board and that, consequently,  
3 the Board may be used as an "arena for internecine warfare."

4 This contention is in no way supported by fact.  
5 Indeed, the Board's history over the last 45 years has  
6 been one of harmony and cooperation, and no evidence  
7 has been presented to our Committee that the Comptroller  
8 and Treasurer have ever unduly impeded gubernatorial  
9 policy. Their presence on the Board has, however provided  
10 our state with a vital system of checks and balances in  
11 the area of state finance on a day to day basis, and with  
12 a continuity of government within the executive branch.  
13 Moreover, as truly independent elected officials their  
14 membership on this Board insures that the public may be aware  
15 of all the facts inherent in any important executive  
16 decision in these sensitive areas. We believe that the  
17 continued existence of the Board of Public Works with  
18 these two independent elected officials as members, one  
19 representing the legislature, is absolutely necessary  
20 to the preservation of the check and balance system and  
21 for the fullest possible public awareness of state financial

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

88

89

90

91

92

93

94

95

96

97

98

99

100

101

102

103

104

105

106

107

108

109

110

111

112

113

114

115

116

117

118

119

120

121

122

123

124

125

126

127

128

129

130

131

132

133

134

135

136

137

138

139

140

141

142

143

144

145

146

147

148

149

150

151

152

153

154

155

156

157

158

159

160

161

162

163

164

165

166

167

168

169

170

171

172

173

174

175

176

177

178

179

180

181

182

183

184

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

201

202

203

204

205

206

207

208

209

210

211

212

213

214

215

216

217

218

219

220

221

222

223

224

225

226

227

228

229

230

231

232

233

234

235

236

237

238

239

240

241

242

243

244

245

246

247

248

249

250

251

252

253

254

255

256

257

258

259

260

261

262

263

264

265

266

267

268

269

270

271

272

273

274

275

276

277

278

279

280

281

282

283

284

285

286

287

288

289

290

291

292

293

294

295

296

297

298

299

300

301

302

303

304

305

306

307

308

309

310

311

312

313

314

315

316

317

318

319

320

321

322

323

324

325

326

327

328

329

330

331

332

333

334

335

336

337

338

339

340

341

342

343

344

345

346

347

348

349

350

351

352

353

354

355

356

357

358

359

360

361

362

363

364

365

366

367

368

369

370

371

372

373

374

375

376

377

378

379

380

381

382

383

384

385

386

387

388

389

390

391

392

393

394

395

396

397

398

399

400

401

402

403

404

405

406

407

408

409

410

411

412

413

414

415

416

417

418

419

420

421

422

423

424

425

426

427

428

429

430

431

432

433

434

435

436

437

438

439

440

441

442

443

444

445

446

447

448

449

450

451

452

453

454

455

456

457

458

459

460

461

462

463

464

465

466

467

468

469

470

471

472

473

474

475

476

477

478

479

480

481

482

483

484

485

486

487

488

489

490

491

492

493

494

495

496

497

498

499

500

501

502

503

504

505

506

507

508

509

510

511

512

513

514

515

516

517

518

519

520

521

522

523

524

525

526

527

528

529

530

531

532



1 matters. Were these officials not to sit on this Board,  
2 checks and balances would be necessarily withdrawn and  
3 public meetings could and might well be nothing more than  
4 meetings to announce decisions already made behind closed  
5 doors. In effect this would be merely a history lesson,  
6 the accuracy of which might or might not be determined  
7 at a much later date by post audit.

8 Moreover, the majority admits to recommending  
9 the elimination of existing constitutional checks within  
10 the executive branch (even though the Constitution provides  
11 for such checks within the legislative and judicial  
12 branches, i.e., bicameralism, the right of appeal, etc.).  
13 They believe that legislative post audit will be a suffi-  
14 cient replacement. In our opinion legislative post audit,  
15 important though it is, does not in any way provide the  
16 same type of check. Legislative post audit operates after  
17 the fact and has no control over or access to the day-to-day  
18 operations of sensitive state business.

19 We believe that the Governor should be in  
20 position to exercise control over the actions of the  
21 Board. Consequently, we recommend that he be given the

22. 11. 1916. 2. 2. 1916. 1. 1. 1916.

1 power to appoint two of the members. Such a provision  
2 would permit the Governor to have a controlling vote  
3 on the important issues while enabling the Comptroller  
4 and Treasurer publicly to analyze and present objection to any  
5 of the actions of the majority which they feel might be  
6 against the best interests of the state. Furthermore,  
7 their minority membership would provide the Governor  
8 with advice and counsel born of long experience in state  
9 government.

10 We feel that the office of Governor should be  
11 strengthened and streamlined just as we support branches.  
12 These changes must be made, however, with prudence  
13 and care, making government more efficient while continuing  
14 important protections against unwise, unfair or precipitous  
15 actions not in the best interests of our citizens. The  
16 Board of Public Works has served our state well, and it  
17 has a vitally important role to play in the challenging  
18 times ahead.

19 The protections which it affords our citizens  
20 must be guaranteed in a new Constitution as problems  
21 become more complex, the cost of government continues

[illegible]

1 to spiral, and the pace of life grows more rapid.

2 We, therefore, respectfully urge the Convention  
3 to retain the Board of Public Works -- increasing its  
4 membership to five and recommending to the General Assembly  
5 that its duties be streamlined.

6 THE CHAIRMAN: MINORITY REPORT NO. EB-1(C)  
7 will be received and distributed.

8 Minority Report EB-1(C). The Clerk will read  
9 the report.

10 MR. QUILLEN: A MINORITY REPORT concerning  
11 Committee Report No. EB-1 in which the Committee on  
12 the Executive Branch voted 11-9 not to provide for the  
13 office of an elected Treasurer in the Constitution.

14 THE CHAIRMAN: Minority Report No. EB-1(C) will  
15 be received and distributed.

16 Minority Report EB-1(D). The Clerk will read  
17 the report.

18 MR. QUILLEN: Minority Report No. EB-1(D), by  
19 Delegates Buzzell, Dorsey, Finch, James, Mason, Smith,  
20 Storm, Sybert and Tawes, of the Committee on the Executive  
21 Branch.

U. S. G. P. 1914



1 A MINORITY REPORT concerning Committee Report  
 2 No. EB-1 in which the Committee on the Executive Branch  
 3 voted 11-9 not to provide for the office of an elected  
 4 Attorney General in the Constitution.

5 THE PRESIDENT: Minority Report No. EB-1(D) will  
 6 be received and distributed.

7 There has also been distributed today  
 8 Memorandum accompanying Delegate Proposal No. 410 by Dele-  
 9 gate Finch, Memorandum accompanying Delegate Proposal No.  
 10 413 by Delegate Finch.

11 There has also been distributed another reprint  
 12 from Volume 2 of the publications of Constitutional Conven-  
 13 tion Commission. This shows in tabular form a comparison  
 14 of all the provisions of the judiciary article of the  
 15 present Constitution with those of the previous consti-  
 16 tutions.

17 I am not suggesting you read it. It is here for  
 18 reference. It may save some time in questioning, if you  
 19 have a question, as to what the previous constitution may  
 20 have provided in the given area with respect to the  
 21 judiciary article; you can see it at a glance by referring

U. S. GOVERNMENT PRINTING OFFICE: 1964

1 to this tabulation. I would suggest, therefore, that  
2 you keep it in your desk on the floor.

3 I am very happy to report to you that the report  
4 of the Committee on the Legislative Branch is in the  
5 Clerk's Office, LB-2, Report of the Committee on Suffrage  
6 and Elections, S&E-2 is in my office, and this means that  
7 every committee has today or heretofore filed its principal  
8 report, its final report on the principal subjects which  
9 which they are concerned.

10 As I indicated this morning, I have asked the  
11 Committee on Suffrage and Elections to defer distribution  
12 of their report to give them further opportunity to  
13 polish some of the language perhaps and maybe save time  
14 in amendments.

15 The Committee on General Provisions still has under  
16 consideration complete, but not yet in polished form, their  
17 report with respect to impeachment, amendments, separation  
18 of powers, and provision as to the common law. Each of  
19 the committees has under consideration a few tag ends  
20 dealing with specific proposals. I have asked each committee  
21 not to defer their principal reports in order to complete

U. S. DEPT. OF AGRICULTURE  
BUREAU OF PLANT INDUSTRY  
WASHINGTON, D. C.

1 all of these loose ends.

2 I will ask the Convention at the appropriate  
3 time, on Monday or Tuesday, to permit the filing of  
4 these reports, which have been delayed at my request.  
5 The reports are complete, and I think that the Committee  
6 Chairman, each of the committees of the Convention, are  
7 due a very hearty vote of thanks for their untiring  
8 efforts and considerable work at night and considerable  
9 pressure from me on the Committee Chairmen and on  
10 their staffs to get all of these reports in on time. When  
11 you see them, you will realize that the Convention  
12 delegates, Chairmen and Staff have really been working  
13 very, very hard in the past few weeks.

14 I want to extend my personal thanks and I am  
15 sure you do, too. (Applause)

16 Occasionally there comes into the President's  
17 office a letter which I feel impelled to share with you.  
18 I received such a letter this morning. I won't read  
19 you the entire letter, but it contains a few excerpts  
20 that I think are really too precious not to pass on to you.  
21 The letter is from the Principal of the Hampton School,

1. 1940  
2. 1941  
3. 1942  
4. 1943  
5. 1944  
6. 1945  
7. 1946  
8. 1947  
9. 1948  
10. 1949  
11. 1950  
12. 1951  
13. 1952  
14. 1953  
15. 1954  
16. 1955  
17. 1956  
18. 1957  
19. 1958  
20. 1959  
21. 1960  
22. 1961  
23. 1962  
24. 1963  
25. 1964  
26. 1965  
27. 1966  
28. 1967  
29. 1968  
30. 1969  
31. 1970  
32. 1971  
33. 1972  
34. 1973  
35. 1974  
36. 1975  
37. 1976  
38. 1977  
39. 1978  
40. 1979  
41. 1980  
42. 1981  
43. 1982  
44. 1983  
45. 1984  
46. 1985  
47. 1986  
48. 1987  
49. 1988  
50. 1989  
51. 1990  
52. 1991  
53. 1992  
54. 1993  
55. 1994  
56. 1995  
57. 1996  
58. 1997  
59. 1998  
60. 1999  
61. 2000  
62. 2001  
63. 2002  
64. 2003  
65. 2004  
66. 2005  
67. 2006  
68. 2007  
69. 2008  
70. 2009  
71. 2010  
72. 2011  
73. 2012  
74. 2013  
75. 2014  
76. 2015  
77. 2016  
78. 2017  
79. 2018  
80. 2019  
81. 2020  
82. 2021  
83. 2022  
84. 2023  
85. 2024  
86. 2025  
87. 2026  
88. 2027  
89. 2028  
90. 2029  
91. 2030  
92. 2031  
93. 2032  
94. 2033  
95. 2034  
96. 2035  
97. 2036  
98. 2037  
99. 2038  
100. 2039  
101. 2040  
102. 2041  
103. 2042  
104. 2043  
105. 2044  
106. 2045  
107. 2046  
108. 2047  
109. 2048  
110. 2049  
111. 2050  
112. 2051  
113. 2052  
114. 2053  
115. 2054  
116. 2055  
117. 2056  
118. 2057  
119. 2058  
120. 2059  
121. 2060  
122. 2061  
123. 2062  
124. 2063  
125. 2064  
126. 2065  
127. 2066  
128. 2067  
129. 2068  
130. 2069  
131. 2070  
132. 2071  
133. 2072  
134. 2073  
135. 2074  
136. 2075  
137. 2076  
138. 2077  
139. 2078  
140. 2079  
141. 2080  
142. 2081  
143. 2082  
144. 2083  
145. 2084  
146. 2085  
147. 2086  
148. 2087  
149. 2088  
150. 2089  
151. 2090  
152. 2091  
153. 2092  
154. 2093  
155. 2094  
156. 2095  
157. 2096  
158. 2097  
159. 2098  
160. 2099  
161. 2100  
162. 2101  
163. 2102  
164. 2103  
165. 2104  
166. 2105  
167. 2106  
168. 2107  
169. 2108  
170. 2109  
171. 2110  
172. 2111  
173. 2112  
174. 2113  
175. 2114  
176. 2115  
177. 2116  
178. 2117  
179. 2118  
180. 2119  
181. 2120  
182. 2121  
183. 2122  
184. 2123  
185. 2124  
186. 2125  
187. 2126  
188. 2127  
189. 2128  
190. 2129  
191. 2130  
192. 2131  
193. 2132  
194. 2133  
195. 2134  
196. 2135  
197. 2136  
198. 2137  
199. 2138  
200. 2139  
201. 2140  
202. 2141  
203. 2142  
204. 2143  
205. 2144  
206. 2145  
207. 2146  
208. 2147  
209. 2148  
210. 2149  
211. 2150  
212. 2151  
213. 2152  
214. 2153  
215. 2154  
216. 2155  
217. 2156  
218. 2157  
219. 2158  
220. 2159  
221. 2160  
222. 2161  
223. 2162  
224. 2163  
225. 2164  
226. 2165  
227. 2166  
228. 2167  
229. 2168  
230. 2169  
231. 2170  
232. 2171  
233. 2172  
234. 2173  
235. 2174  
236. 2175  
237. 2176  
238. 2177  
239. 2178  
240. 2179  
241. 2180  
242. 2181  
243. 2182  
244. 2183  
245. 2184  
246. 2185  
247. 2186  
248. 2187  
249. 2188  
250. 2189  
251. 2190  
252. 2191  
253. 2192  
254. 2193  
255. 2194  
256. 2195  
257. 2196  
258. 2197  
259. 2198  
260. 2199  
261. 2200  
262. 2201  
263. 2202  
264. 2203  
265. 2204  
266. 2205  
267. 2206  
268. 2207  
269. 2208  
270. 2209  
271. 2210  
272. 2211  
273. 2212  
274. 2213  
275. 2214  
276. 2215  
277. 2216  
278. 2217  
279. 2218  
280. 2219  
281. 2220  
282. 2221  
283. 2222  
284. 2223  
285. 2224  
286. 2225  
287. 2226  
288. 2227  
289. 2228  
290. 2229  
291. 2230  
292. 2231  
293. 2232  
294. 2233  
295. 2234  
296. 2235  
297. 2236  
298. 2237  
299. 2238  
300. 2239  
301. 2240  
302. 2241  
303. 2242  
304. 2243  
305. 2244  
306. 2245  
307. 2246  
308. 2247  
309. 2248  
310. 2249  
311. 2250  
312. 2251  
313. 2252  
314. 2253  
315. 2254  
316. 2255  
317. 2256  
318. 2257  
319. 2258  
320. 2259  
321. 2260  
322. 2261  
323. 2262  
324. 2263  
325. 2264  
326. 2265  
327. 2266  
328. 2267  
329. 2268  
330. 2269  
331. 2270  
332. 2271  
333. 2272  
334. 2273  
335. 2274  
336. 2275  
337. 2276  
338. 2277  
339. 2278  
340. 2279  
341. 2280  
342. 2281  
343. 2282  
344. 2283  
345. 2284  
346. 2285  
347. 2286  
348. 2287  
349. 2288  
350. 2289  
351. 2290  
352. 2291  
353. 2292  
354. 2293  
355. 2294  
356. 2295  
357. 2296  
358. 2297  
359. 2298  
360. 2299  
361. 2300  
362. 2301  
363. 2302  
364. 2303  
365. 2304  
366. 2305  
367. 2306  
368. 2307  
369. 2308  
370. 2309  
371. 2310  
372. 2311  
373. 2312  
374. 2313  
375. 2314  
376. 2315  
377. 2316  
378. 2317  
379. 2318  
380. 2319  
381. 2320  
382. 2321



1 who was here at the Convention, with a group of her  
2 students on November 16. She writes to congratulate  
3 the Convention on the work it is doing and to express a  
4 tremendous interest which she as an educator and which her  
5 students had in the work of the Convention and of the  
6 Committees.

7 With her letter she sent a memorandum of perhaps  
8 12 or 15 comments made by several of the students, or  
9 15 of the students, either on their way back to school  
10 or the following day. Two of them I think you really ought  
11 to hear. One goes on at some length, but concludes with  
12 these three sentences: "I was disappointed when we left  
13 the General Session because I had expected to be there  
14 longer. I was surprised to find that they had trouble  
15 with the wording of the Constitution."

16 With this particular group, several of the  
17 delegates spent time over lunch hour talking to them about  
18 the Convention, and one of the delegates who did this  
19 was Delegate Winslow. The comment of one of the students  
20 with respect to that was this: "My favorite part of  
21 the trip was talking with Dr. Winslow. I thought he was

U. S. DEPT. OF AGRICULTURE  
BUREAU OF PLANT INDUSTRY  
WASHINGTON, D. C.

1 very sincere, as he took his own lunch time to tell us  
2 about the Convention. I don't know just how many people  
3 would take their lunch to tell us about the Convention,  
4 so I gave him a candy bar. (Applause).

5 I thought that really should be preserved in  
6 the Journal of the Convention.

7 DELEGATE PULLEN: Mr. Chairman.

8 THE PRESIDENT: Delegate Pullen.

9 DELEGATE PULLEN: May I add to those two splendid  
10 statements? I think the most astute remark I have  
11 heard in this Convention came from a little child, I  
12 don't remember from what school, who in response to an  
13 invitation of the Chairman of our Committee, asked this  
14 question: "Why isn't everybody here?"

15 THE PRESIDENT: The Chair recognizes Delegate  
16 Powers.

17 DELEGATE POWERS: Mr. President, I move the  
18 Convention resolve itself into the Committee of the Whole,  
19 to resume consideration of Committee Recommendation JB-1.

20 THE PRESIDENT: Is there a second?

21 (Whereupon, the motion was seconded.)



1 THE PRESIDENT: Delegate Hostetter?

2 DELEGATE HOSTETTER: I rise to a point of  
3 personal privilege, sir.

4 THE PRESIDENT: State the privilege.

5 DELEGATE HOSTETTER: I would like to have  
6 recognized at this time a number of members of the Maryland-  
7 Delaware Press Association, who are in the gallery to  
8 the rear, here on a news-writing short course, and they  
9 are attending this session and will after this session  
10 write a story with respect to it, and I hope it is worthy  
11 of a candy bar. (Applause)

12 THE PRESIDENT: All in favor of the motion that the  
13 Convention resolve itself into the Committee of the Whole  
14 signify by saying Aye; contrary, No. The ayes have it.  
15 It is so ordered.

16 (Whereupon, at 2:45 o'clock p.m., the Convention  
17 resolved itself into the Committee of the Whole.)

18 (The mace was removed by the Sergeant at Arms.)

19 THE CHAIRMAN: The Committee of the Whole will  
20 please come to order.

21 We still have under consideration Committee





1 Recommendation JB-1.

2 Before calling on the Chairman of that Committee  
3 for the presentation of the next part of that report,  
4 I wish to state that I understand from the staff that  
5 they gave in writing yesterday to Delegate Malkus all  
6 of the committee's information on the subject of costs with  
7 respect to the proposed judiciary article. I am further  
8 advised that the Department of Fiscal Research, Dr. Cooper,  
9 and Mr. Odell Smith, have stated that they cannot supple-  
10 ment that data with any additional information.

11 I assume, Delegate Malkus, you have received  
12 the information.

13 The Chair recognizes Delegate Mudd, Chairman  
14 of the Committee, under the request that he come forward  
15 to the reading desk.

16 Under the debate schedule we now take up the  
17 second portion of the article dealing with judicial  
18 selection, tenure and removal, Sections 4512 to 4528. We  
19 will first have the presentation of the committee  
20 recommendations with respect to this portion and then  
21 the presentation of the Minority Report with respect



1 to this portion.

2 Delegate Malkus?

3 DELEGATE MALKUS: Mr. President, I received so  
4 much information, and naturally having no clerical help,  
5 don't know exactly what you meant that I got the count,  
6 or what this is going to cost, but since apparently  
7 there are other people here that will know what this is going  
8 to cost, perhaps it might be well, Mr. President, to write  
9 this in the record, that when we come back to the General  
10 Assembly next January, and if the Constitution passes  
11 in May, that we will know what we have to face as far as  
12 additional cost is concerned.

13 Now, I have got a lot of papers on my desk.  
14 I haven't got time. Maybe somebody can tell us what, and  
15 put in the record, what is this going to cost in addition,  
16 and if you tell us wrong, you certainly cannot blame us  
17 if we do not appropriate any more additional moneys than  
18 you are saying it is going to cost, because that is what  
19 the people will vote on. Maybe somebody can tell us  
20 what it will cost.

21 THE CHAIRMAN: The Chairman of the Committee will



1 make available in response to questions whatever information  
2 he has. I suggest to you that your question in its broadest  
3 implications asks for the impossible. This recommendation  
4 authorizes the General Assembly to prescribe the number of  
5 judges and authorizes them to take other action, unless  
6 one knew that one could not possibly tell the ultimate  
7 cost. I understand that the figures given to you project  
8 the cost on the basis of the number of judges presently  
9 contemplated.

10 DELEGATE MALKUS: Could I comment on that, Mr.  
11 President?

12 THE CHAIRMAN: I am sorry, state it again ,  
13 Delegate Malkus.

14 DELEGATE MALKUS: I say could I make a comment on  
15 what you just said?

16 THE CHAIRMAN: You certainly may.

17 DELEGATE MALKUS: Nothing is impossible as far as  
18 the General Assembly is concerned, as far as giving us  
19 an estimate of costs, and I think the same should apply  
20 to this Convention.

21 We certainly have got enough brains in the





1 State of Maryland to figure out and project this thing  
2 forward into the future that we will know pretty well  
3 what it is going to cost.

4 THE CHAIRMAN: Delegate Mudd.

5 DELEGATE MUDD: Mr. Chairman, ladies and gentlemen  
6 of the committee --

7 THE CHAIRMAN: Delegate Mudd, would you permit  
8 an interruption by the Chair?

9 Today marks the end of another period for some  
10 of the pages. A number of them have seen me at the lunch  
11 recess and have expressed a hope--with which I cannot concur  
12 but I can understand their feeling and I thought I would pass  
13 it along to you-- they have expressed the feeling that  
14 they have very much enjoyed their work at the Convention,  
15 and since their next tour of duty would be in January,  
16 they have said they hope we do not finish December 12,  
17 so they will have a chance to comeback.

18 They have all uniformly said they have enjoyed  
19 the work of the Convention enormously and have felt that  
20 it is an inspiring experience. I think I can speak for  
21 the Convention in saying that we regard their service



1 of the very highest order. (Applause)

2 Delegate Mudd.

3 DELEGATE MUDD: May I supplement that, Mr. Chairman,  
4 by saying that I hope the next ste of pages will not bring  
5 me as many amendments.

6 Ladies and gentlemen of the committee, you have  
7 been very kind and indulgent in giving careful consideration  
8 and ample time for debate to the recommendation of the  
9 Committee on the Judicial Branch.

10 We have so far considered only that part of  
11 the recommendations dealing with the court structure, composi-  
12 tion, jurisdiction and functional divisions.

13 We now come to that part of the committee  
14 recommendation identified as Sections 2.12 through 4.74, and  
15 that subject matter includes selection and tenure of  
16 judges, eligibility for appointment, manner of nomination,  
17 the composition of the nominating commission, the rules  
18 governing the nominating commissions, the compensation  
19 and term of judges, the restrictions on judicial activity  
20 and the activities of the nominating commission, and several  
21 sections dealing with removal, retirement and tenure



1 of judges.

2 We might best approach consideration of the  
3 Committee's recommendation in this area by comparing  
4 the system as it now exists under the present Constitution  
5 with what is proposed by our committee.

6 At the moment, under the existing constitutional  
7 provisions and statutory provisions, except with respect  
8 to judges within the courts of limited jurisdiction, all  
9 other judges are now elected in substantially the following  
10 manner: When a vacancy in the office occurs, the Governor  
11 appoints a member of the Bar to fill the vacancy. It is  
12 customary, although not required, that the appointment is  
13 made from a list by a Bar Association. Such lists frequently  
14 not identical are submitted by both state and bar associa-  
15 tions as well as by organizations of lawyers having common  
16 or mutual interests.

17 There was testimony before our committee, and I  
18 am sure it is true, that of all judges now sitting in  
19 the State of Maryland on the two Courts of Appeals and in our  
20 Circuit Courts, about 70 per cent have been appointed by  
21 our former Govenor, who is a member of this Convention.





1 In each instance, those appointees were made from some  
2 list furnished the Chief Executive for guidance in the  
3 appointment of a lawyer to a vacancy on the bench.

4 Under the present system, that appointee not less  
5 than one year following his appointment must run for  
6 election without a party designation, with the right to file  
7 and cross-file in the primaries, and against live  
8 opponents, if any.

9 Following the election of the appointee or his  
10 opponent, if elected in such an election, the successful  
11 party serves for a term of 15 years. At the expiration  
12 of that term, the process is repeated, if the incumbent has  
13 not reached compulsory retirement age, and the same pro-  
14 cedure is followed over again following appointment between  
15 the expiration of the term and the next general election,  
16 and the next general election following not earlier than  
17 one year thereafter to fill the then existing vacancy.

18 The basic difficulty, as our committee saw it,  
19 with this process at the list level is the number of  
20 lists furnished. There are several, or first of all,  
21 we do not have a unified bar association as yet in the



1 State of Maryland. We have something over 5,000 lawyers,  
2 a State Bar Association, County Bar Associations, City  
3 Bar Associations and then as indicated, associations of  
4 lawyers who have a common interest, such as perhaps  
5 Plaintiff's lawyers, defendants' lawyers, dealing  
6 particularly in the insurance field or workmen's compensa-  
7 tion, so that it is conceivable that under the present  
8 system the Chief Executive may receive for his guidance  
9 in appointing a judge many, many lists which do not carry  
10 the names of the same suggested appointee.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21



1           The system in substance, or the essentials of  
2           the system proposed by your Committee on the Judicial  
3           Branch are these: Number one, gubernatorial appointment  
4           limited to a list of nominees submitted by a nominating  
5           commission.

6           Our recommendation details the personnel of  
7           these nominating commissions.

8           Number two, the appointee runs against his  
9           record after a probationary term, and again after a  
10          ten-year term in office, our proposal being to reduce the  
11          term of the appointed elected judge from 15 to 10 years.

12          A third salient feature of our recommendation  
13          is a poll of the lawyers in the area involved is required  
14          to be held on the question of retention of the judge who  
15          is about to stand for election, and the results are made  
16          public for the benefit of the voters.

17          Another most important part of our recommendation  
18          in this subject matter is the so-called California plan,  
19          which we recommend by way of a commission which is  
20          empowered to investigate complaints of judicial conduct and  
21          disability, with hearing by the highest court on issues





1 of removal, censure and retirement.

2 The system we recommend, ladies and gentlemen  
3 of the commission, is identified as the merit plan for  
4 the selection of judges. It is sometimes called the  
5 Missouri plan, for the reason that it had its birth  
6 there more than 25 years ago. In Maryland this plan  
7 has sometimes been called the Niles Plan. More appro-  
8 priately I feel it should be called the merit plan for  
9 the selection of lawyers, as advocated by Judge Niles in  
10 the State of Maryland.

11 This plan proposed by your committee is not  
12 an experiment. It is not the brainchild of the Committee  
13 on the Judicial Branch. It is what has best been charac-  
14 terized as a merit system for the selection and tenure  
15 of judges, and we prefer to call it that.

16 It has been in operation effectively and on the  
17 basis of testimony before our committee with very  
18 effective results for improvement of the judicial processes  
19 in 13 states in the union.

20 The basis of our recommendation is not for  
21 Maryland to wait until more than half of the states have



1 adopted such a plan, and then proceeded on the proof  
2 that it has worked in more than half of the states, or  
3 at least half of the states. Our recommendation is more  
4 progressive than that. It is based on the proof abundant  
5 before our committee that this is an effective and  
6 improved plan, as demonstrated within those states having  
7 used it, and therefore it behooves Maryland as a pro-  
8 gressive state to be in the forefront of adopting a  
9 better plan for the selection and tenure of judges.

10 Briefly, we think of this plan in terms that  
11 it will enable the job to seek the man, rather than the  
12 reverse, and that it should enable Maryland to obtain  
13 the best of the best lawyers for our judiciary, and it is  
14 in that spirit, after careful consideration and a wealth  
15 of debate within our Committee, that this part of our  
16 proposal has been brought to this Convention, with our  
17 favorable recommendation.

18 We feel it is most significant that the  
19 American Bar Association Journal for the month of Novem-  
20 ber carried a comment on the judicial reform, and we  
21 thought it was so timely and pertinent that we had the



1 article, by the President of this association, Earl F.  
2 Morris, duplicated, and I think yesterday or the day  
3 before a copy was put on the desk of each delegate.

4 I cannot resist calling to your attention the  
5 salient facts obtained in that comment by Earl F. Morris,  
6 now President of the American Bar Association. He says  
7 in part, after making a careful study throughout the  
8 country of the situation involved in the administration  
9 of justice, as follows: If we agree that the reason for  
10 the existence of our courts is to administer justice, it  
11 is clear that this should be done in the most effective  
12 way possible. The most effective way, a modern court  
13 system must embrace certain basic elements or minimum  
14 standards.

15 Now, the first of those which he recommends  
16 is this: Justices of the peace courts must be eliminated  
17 and the lower courts must have full-time salaried jobs.

18 I respectfully suggest to the ladies  
19 and gentlemen of this Convention that his number one  
20 requirement has already been adopted by a majority vote  
21 of this Committee of the Whole. He has two other





1 recommendations which are yet to be submitted by our  
2 majority report to this Committee of the Whole, but  
3 three other recommendations, he says, as essential, are  
4 these: Merit selections, selection of judges, divorce  
5 from political situations must be instituted. A compul-  
6 sory retirement system with adequate retirement compen-  
7 sation, and a system for assigning retired judges must  
8 be adopted. Again, a method of impeachment must be  
9 established for the removal of the incompetent or inca-  
10 pacitated judge.

11 We respectfully suggest that the recommenda-  
12 tion of your committee on the Judicial Branch has adopted  
13 in substance, particularly with reference to the subject  
14 matter now presented to the Committee of the Whole for  
15 consideration, the essentials which the President of the  
16 American Bar Association has determined from his extensive  
17 study and review are most essential in the modernization  
18 and improvement of our court system and in the administra-  
19 tion of justice.

20 I feel that the details of the recommendation  
21 of the committee with respect to selection and tenure are



1 set out in the recommendation in language which  
2 should be clear and understandable to the lay as well as  
3 the law members of this Convention.

4 I will, therefore, not detail the component  
5 parts of the overall plan. This is not technical language.  
6 It should be meaningful to every member of this Conven-  
7 tion.

8 I will be happy to answer any questions that  
9 are required to clarify the plan and I hope that these  
10 few words have given you the essentials sufficient for you  
11 to understand our proposal, but if not, I will be happy  
12 to answer any questions.

13 DELEGATE JAMES (PRESIDING): Any questions for  
14 the purpose of clarification? Delegate Schloeder.

15 DELEGATE SCHLOEDER: Chairman Mudd, I notice  
16 in Section 5.21, lines 49 and 50, this is with regard to  
17 the poll by secret ballot of the lawyers of the area in  
18 which the judge is required to stand for election, and so  
19 forth. I just wonder, there is nothing in here that says  
20 whether or not the judge would be seeking election, and  
21 I just wonder what the thinking of the committee was.



1 I am thinking of a situation where a judge  
2 might not want to stand for re-election or election and  
3 want quietly to disappear. There doesn't seem to be any  
4 provision here that would enable him to do that.

5 DELEGATE MUDD: It was certainly our intention  
6 not to require that the poll be taken with respect to any  
7 incumbent judge who did not desire to seek re-election and  
8 if any improvement in the language is necessary to clarify  
9 that situation, we would certainly not resist it, but I  
10 can assure you it was not the intention of our recommen-  
11 dation to require an incumbent judge to stand or to allow  
12 this poll to be taken if he did not desire to seek re-  
13 election.

14 DELEGATE SCHLOEDER: Thank you.

15 THE CHAIRMAN: Are there any further questions  
16 of the committee chairman? Delegate Burdette?

17 DELEGATE BURDETTE: Mr. Chairman, I have two  
18 related questions of the Chairman of the committee. Might  
19 I ask, Please, sir, what the definition or intent of the  
20 committee may be with respect to the word "lawyer", as  
21 used in these paragraphs?





1 DELEGATE MUDD: The definition of "lawyer"?

2 DELEGATE BURDETTE: As here intended.

3 DELEGATE MUDD: I would say it intends to be  
4 a lawyer admitted to practice before the Court of Appeals  
5 of Maryland.

6 THE CHAIRMAN: Delegate Burdette.

7 DELEGATE BURDETTE: May I ask the related  
8 question: Are the members -- I am not quite sure of all the  
9 legal facts -- is a member of the judiciary within the  
10 category of lawyer?

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: Yes.

13 DELEGATE BURDETTE: In that case, would I  
14 conclude correctly that the lawyers for the nominating  
15 commission might elect a very considerable body of the  
16 judiciary if they should so desire?

17 DELEGATE MUDD: Within the definition I have  
18 just given you of lawyer, including judge, that is possible,  
19 but that was not the intention of the committee recommen-  
20 dation.

21 THE CHAIRMAN: Delegate Burdette.



1 DELEGATE BURDETTE: But not the intention to  
2 exclude it?

3 THE CHAIRMAN: Delegate Mudd.

4 DELEGATE MUDD: I would say yes, it was our in-  
5 tention to exclude lawyers who were judges in the category  
6 of lawyres for the purpose of these nominating commissions.

7 DELEGATE BURDETTE: Thank you.

8 THE CHAIRMAN: Delegate Willoner.

9 DELEGATE WILLONER: Mr. Chairman, I was  
10 wondering how you contemplate the nominating commissions  
11 to be set up under 5.16? Under 5.15 you of course have it  
12 set up in the exact manner, but under 5.16 you leave it  
13 up to the legislature to develop the nominating commis-  
14 sion.

15 Could you explain to the body how you expect  
16 this provision to operate?

17 DELEGATE MUDD: You mean how I anticipate the  
18 legislature will set them up?

19 DELEGATE WILLONER: Yes, sir.

20 DELEGATE MUDD: Well, my most reasonable  
21 expectation would be they would set up a district



1 nominating commission, or at least that was my thinking  
2 before this morning, but it is left to the wisdom of the  
3 legislature, and I do not think it contemplates or did  
4 not contemplate in committee necessarily a commission  
5 for each county, if that is responsive to your question.

6 THE CHAIRMAN: DELEGATE WILLONER.

7 DELEGATE WILLONER: Yes. I assume then the  
8 contemplation is that these commissions would be set up  
9 at least on a regional basis?

10 DELEGATE MUDD: That would be my expectation of  
11 the manner in which the legislature would handle it,  
12 yes.

13 THE CHAIRMAN: Delegate Fox?

14 DELEGATE FOX: Chairman, I am just

15 wondering what would be the status of a retired judge  
16 as far as being a lawyer member of the commission? It  
17 might be of some significance particularly in a small  
18 county. In Garrett County, we heard about six lawyers, and  
19 if two of them were nominated judges there would be not  
20 many left.

21 DELEGATE MUDD: That is a good question,





1 Delegate Fox, and we have some distinguished or retired  
2 judges members of this convention. I might say it would  
3 be my view that I would guess, in view of the majority of  
4 the committee, that when we said lawyers we contemplated  
5 practicing lawyers, in active practice, and not retired  
6 judges who had not, certainly those who had not resumed  
7 practice of law.

8 THE CHAIRMAN: Delegate Fox.

9 DELEGATE FOX: They would then be barred from  
10 serving either as lawyer members or as lay members?

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: Within that interpretation they  
13 could be barred, yes.

14 THE CHAIRMAN: Delegate White.

15 DELEGATE WHITE: Chairman Mudd, I am interested  
16 in the qualifications for becoming a judge of the Supreme  
17 Bench, or the Supreme Court now of Maryland. Does the fact  
18 that a judge has been divorced have any adverse barring on  
19 his eligibility to become a member of a Supreme Bench?

20 DELEGATE MUDD: Are you speaking of which Supreme  
21 Bench, Delegate White?



1 DELEGATE WHITE: I am speaking of the Supreme  
2 Bench as it existed some time in the past.

3 THE CHAIRMAN: Are you talking about the  
4 Supreme Bench of Baltimore City or are you talking about  
5 the Court of Appeals of Maryland?

6 DELEGATE WHITE: Baltimore City. Does the  
7 fact that a judge is the victim of a divorce have any  
8 adverse bearing on his eligibility to become a member  
9 of the Bench or court?

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: Certainly not, in the language  
12 of eligibility used in our recommendation, Delegate  
13 White.

14 THE CHAIRMAN: Delegate White.

15 DELEGATE WHITE: A recent experience in Baltimore  
16 City indicated to me and I quote, a judge is autonomous  
17 once he takes the bench.

18 In your concept of the new constitution, how  
19 autonomous will a judge be and what can we do about it  
20 when it works to the detriment of a citizen appearing  
21 before him?



1 DELEGATE MUDD: I think, Delegate White, the  
2 section of our recommendation beginning on page 7 dealing  
3 with removal or retirement of judges is decidedly the best  
4 procedure Maryland has ever -- that there has been recom-  
5 mended to Maryland to cope with that sort of an unfor-  
6 tunate situation.

7 THE CHAIRMAN: Delegate White.

8 DELEGATE WHITE: For example, do you perceive  
9 of the rules that will govern the conduct of a judge, the  
10 rules could keep him from acting in an erratic manner?  
11 For example, maybe you are guilty of speeding, 35 miles per  
12 hour in the same zone, the first offense, and two different  
13 people appear before the same judge and for some strange  
14 reason, having nothing to do with prior conviction, one is  
15 fined \$35 and another gets a suspended sentence.

16 Do we have any concept of making provisions  
17 which might protect citizens from this kind of erratic  
18 performance on the part of a judge?

19 DELEGATE MUDD: I can only answer your question  
20 by saying that any conduct of a judge which came within  
21 categories detailed in Section 5.25, which are these,





1 of misconduct while in office, persistent failure to  
2 perform the duties of his office, or conduct prejudicial  
3 to the proper administration of justice, any conduct  
4 falling within those categories would be within the  
5 jurisdiction of the Judicial Disabilities Commission.

6 Now, certainly that would not include, in my  
7 humble judgment , a sentence or a fine which some man or  
8 woman received from a particular judge.

9 THE CHAIRMAN: Delegate White.

10 DELEGATE WHITE: Well, one last question. I  
11 am trying to find out who will sit in judgment, for  
12 example if a judge is accused of misconduct, will he  
13 finally, or will the final determination as to his guilt  
14 be made by the Court of Appeals?

15 THE CHAIRMAN: Delegate White, the Chair suggests  
16 that that question will probably come up when the Com-  
17 mittee considers the sections dealing with removal, which I  
18 believe are further on.

19 DELEGATE MUDD: No, they are in there now.

20 THE CHAIRMAN: Is that included in this section?

21 DELEGATE MUDD: Yes.



1 THE CHAIRMAN: I am sorry. It is included in  
2 this part. Your question is proper.

3 DELEGATE WHITE: The impact of my question is,  
4 will judges sit in judgment on other judges, or will  
5 they be subjected or exposed to a citizen's or another  
6 agency which is not under the purview of the judicial?

7 DELEGATE MUDD: Under our proposal, any judge  
8 whose conduct warranted consideration within the categories  
9 just mentioned, the allegations would first be submitted  
10 to this proposed commission on Judicial Disabilities.  
11 Their powers are detailed in Section 5.27. If in the  
12 judgment of this committee on Judicial Disabilities the  
13 conduct warranted action, then that commission recommends  
14 retirement or removal. The Court of Appeals then, after  
15 hearing, could retire, censure, or remove the judge if  
16 the hearing resulted in a finding of misconduct as pre-  
17 viously related.

18 THE CHAIRMAN: Delegate White.

19 DELEGATE WHITE: If the complaining citizen did  
20 not receive satisfaction as a result of the action by the  
21 Court of Appeals, would he seek any other relief, or could



1 he seek any other relief?

2 DELEGATE MUDD: Not that I am aware of, no.

3 THE CHAIRMAN: Delegate Mudd, your proposal  
4 does not remove impeachment proceedings if they are  
5 covered under other parts of the Constitution, does it?

6 DELEGATE MUDD: Exactly correct. Thank you, Mr.  
7 Chairman. But may I yield to Judge Henderson, who may  
8 have some further comment on that.

9 THE CHAIRMAN: Delegate Henderson.

10 DELEGATE HENDERSON: I think I might make this  
11 comment. I believe that Delegate White's question concerns  
12 an improper sentence, rather than improper conduct. Now  
13 I might suggest that every sentence is subject to  
14 review under the new procedure, with the set-up only a  
15 year or so ago, whereby the sentences can be reviewed and  
16 by the normal process of appeal, so that if what is in his  
17 mind is a proper review of an improper sentence, that is  
18 already provided for under other sections.

19 THE CHAIRMAN: Thank you. Delegate Sickles.

20 DELEGATE SICKLES: Delegate Mudd, with respect  
21 again on the expression "lawyer", throughout the state





1 or lawyer in the area, as you know, we neighbor on the  
2 jurisdiction -- another jurisdiction, and I wonder what  
3 the applicability of the lawyers of the area is.

4 Does this involve where the lawyer lives or  
5 would it involve where his office is, and is it possible  
6 that he might be in more than one area for the reason of  
7 his office being one place and his home being someplace  
8 else, or could he be in more than one area if he is part  
9 of a firm that has more than one office in the state?

10 DELEGATE MUDD: Is that under eligibility for  
11 appointment as a judge?

12 DELEGATE SICKLES: I wish you would clarify  
13 it with respect to all of these possible applications.

14 DELEGATE MUDD: Our committee had before it  
15 a proposal on eligibility that is slightly different from  
16 that which we did adopt. The proposal, or one proposal  
17 considered by the committee was that a lawyer would be  
18 eligible for appointment to the Bench within the district  
19 or county in which he lived, or in which he had his  
20 principal office.

21 Our majority view rejected the latter



1 classification and for eligibility of appointment, the  
2 judge must reside in the area or political subdivision  
3 where the vacancy exists.

4 Now, as to eligibility for election, appoint-  
5 ment to the nominating commission, I think the word "area"  
6 is used because it was possible that the nominating  
7 commission might be for an area larger than one county, but  
8 I would say that it was our thinking that it would mean  
9 residence and not practicing area.

10 THE CHAIRMAN: Delegate Sickles.

11 DELEGATE SICKLES: If I may ask a further ques-  
12 tion, would that also apply to the poll if taken by  
13 secret ballot?

14 DELEGATE MUDD: Of the lawyers residing in  
15 the area and not practicing therein, I would say yes.

16 DELEGATE SICKLES: Would the court have any  
17 authority, the Court of Appeals, under its rule-making  
18 power, to define with further clarity what a lawyer would  
19 be under the terms of this article? I am thinking in  
20 terms of that person who may have practiced a few years  
21 ago, but now is the president of the bank as a full-time



1 occupation, and therefore although he may have his name  
2 on the door somewhere is not really in point of fact  
3 currently practicing law. I would assume that this is  
4 sort of an open question, as I read it now in the article,  
5 and would there be possibility of further employment by  
6 either the General Assembly or the Court of Appeals?

7 DELEGATE MUDD: I think it is obviously impli-  
8 cit in our recommendation, the last sentence of Section  
9 5.17, election procedure and eligibility of lawyer mem-  
10 bers of nominating commissions and of their electors shall  
11 be prescribed by rule. Therefore the Court of Appeals  
12 would have within its rule-making power to be more defina-  
13 tive in that area.

14 THE CHAIRMAN: Delegate Chabot.

15 DELEGATE CHABOT: In Section 5.15 and 5.16,  
16 where the appointment of the nominating commission is  
17 provided for, there is no indication as to whether there is  
18 an intention that terms be staggered, and no provision  
19 for vacancies. Is it possible for an entire commission  
20 to be appointed or elected, as the case may be, at one  
21 time?





1 DELEGATE MUDD: It would have to be initially,  
2 certainly.

3 DELEGATE CHABOT: Yes, but after the initial  
4 appointment or election, in view of the fact that both  
5 sections set forth the length of the term, is it possible  
6 that thereafter, with the possible exception of vacancies,  
7 that the person who happens to be governor at the time  
8 may appoint all those he has an opportunity to appoint at  
9 one time?

10 DELEGATE MUDD: I do not recall that possibility  
11 was discussed in committee, and it seems to me that we  
12 did consider the probability, as well as the possibility,  
13 that by retirement or resignation or death, that the  
14 term would ultimately become staggered.

15 THE CHAIRMAN: Delegate Chabot.

16 DELEGATE CHABOT: With regard to Section 5.18,  
17 it is provided that the lay members shall be appointed from  
18 the qualified voters of the state; but the qualified  
19 voters will not include anyone who is a member of the Bar  
20 of the state? Is that the intention of the committee?

21 DELEGATE MUDD: That would be my interpretation



1 of the intention of the committee, yes.

2 THE CHAIRMAN: Delegate Chabot.

3 DELEGATE CHABOT: With regard to Section 5.20,  
4 a non-judicial member of the commission may not hold any  
5 public office for profit, public office of profit.

6 Would this forbid a non-judicial member from  
7 holding any Federal office, or is this limited to public  
8 office, offices of profit in this state?

9 DELEGATE MUDD: We use public office as a  
10 second choice, Delegate Chabot, first having in the  
11 draft as I recollect it, states or local public office,  
12 and then substituted public office as being more inclu-  
13 sive and prohibiting Federal office as well, if that an-  
14 swers your question.

15 THE CHAIRMAN: Delegate Chabot.

16 DELEGATE CHABOT: But I assume that in the  
17 last sentence in that section, we are not intending in  
18 this constitution to prohibit the Federal government from  
19 thereafter appointing such a person to some Federal  
20 public office of profit.

21 DELEGATE MUDD: For one year, yes.



1 DELEGATE CHABOT: We are trying to prohibit  
2 the Federal Government from appointing such a person?

3 DELEGATE MUDD: Well, we say, shall not be  
4 eligible to hold any other public office for profit for  
5 one year immediately following his service.

6 THE CHAIRMAN: Delegate Mudd, the question may  
7 be misunderstood. I think Delegate Chabot's question was  
8 whether the committee intended by that sentence to impose  
9 a limitation upon the Federal government in the appoint-  
10 ment of persons to Federal offices.

11 DELEGATE MUDD: I don't see how we could impose  
12 a limitation or restriction on the Federal level, no.

13 THE CHAIRMAN: Delegate Chabot.

14 DELEGATE CHABOT: So as a practical matter  
15 public office for profit, on line 23, refers only to  
16 public offices in this state, but public office for profit  
17 on line 17 and 18 refers to Federal as well as state and  
18 local public offices?

19 DELEGATE MUDD: That was our intention.

20 DELEGATE CHABOT: Thank you.

21 THE CHAIRMAN: Delegate Raley.





1 DELEGATE RALEY: Chairman Mudd, Section 5.16,  
2 I always like to know why these things are, and I am of  
3 course reading it and I can see many problems with it,  
4 particularly on the nominating commission being composed  
5 of a judge.

6 Would you tell me the thinking of your com-  
7 mittee and your study and research, why you came to that  
8 conclusion?

9 DELEGATE MUDD: Well, very specifically, this,  
10 Delegate Raley, that in our view a judge is oftentimes,  
11 by virtue of his exposure to the talent or lack of talent  
12 of the members of the Bar, is particularly well equipped to  
13 evaluate the potential of a candidate for service on the  
14 Bench, and we feel that the benefit of a judge's view,  
15 concurrent with that of laymembers and lawyers, would  
16 round out the most beneficial information that could be  
17 collected as to the qualifications of those eligible.

18 THE CHAIRMAN: Delegate Raley.

19 DELEGATE RALEY: Would you also tell me why  
20 in 5.21 that you are going to come and have this procedure  
21 of a secret poll of the lawyers, sort of an election,



1        apparently, where a judge is required to stand for re-  
2        election or stand for election; what is the reasoning  
3        behind that, and has this been used or tried before?

4                DELEGATE MUDD: Yes. It has been used in other  
5        states, and the reason for the secrecy is in the taking  
6        of the poll, but the results of the poll are published. I  
7        take it the secrecy intended there is that -- how a lawyer  
8        voted will not necessarily be divulged or recorded. It  
9        will be a ballot presumably without a name on it. To that  
10       extent it will reflect the secret vote of a lawyer who is  
11       polled.

12               THE CHAIRMAN: Delegate Marion.

13               DELEGATE MARION: No, thank you.

14               THE CHAIRMAN: Delegate Malkus.

15               DELEGATE MALKUS: Mr. President, I am going  
16        to preface my remarks, my questioning first, by saying  
17        this: You may very well accuse me of speaking emotionally,  
18        or any other way, but I don't call it emotion. I call it  
19        the truth.

20               We are here to strengthen the judiciary, the  
21        legislative branch and the executive branch. That is why



1 we are here, and nobody cares about the people.

2 Now, my question, Mr. President: Under our  
3 present system, where the people have the right to review  
4 their judgments, that privilege is now being taken away  
5 from them. Why, Mr. Chairman, are you taking away from  
6 the people the right to say who their judge will be?

7 THE CHAIRMAN: Delegate Mudd.

8 DELEGATE MUDD: Because we are not taking away  
9 from the people; they can vote Yea or Nay.

10 THE CHAIRMAN: Delegate Malkus.

11 DELEGATE MALKUS: They cannot under present  
12 proposal, which is the same proposal they had in Russia,  
13 where you have got one man on the ballot. I am not arguing  
14 with you.

15 DELEGATE MUDD: What is your question, sir?

16 DELEGATE MALKUS: I am going to finish my  
17 remark and then I will answer -- I will ask you my  
18 question. You can't be somebody with nobody. That is  
19 exactly what you are proposing. Now, my question to you  
20 is this: If we have a sitting judge and in the eyes of the  
21 people there is someone who is much better qualified to





1 serve them as judge, why should not that person have the  
2 opportunity to run against the incumbent judge?

3 DELEGATE MUDD: The answer to your first question  
4 is you can beat an incumbent with nobody, because it has  
5 been done in other states.

6 THE CHAIRMAN: Just a second, Delegate Malkus.  
7 He had only answered your first question.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21



1 DELEGATE MUDD: Yes, the answer to your  
2 second question would be if the incumbent is removed,  
3 because of his record, then the better qualified person  
4 who could not run against him in a live election would  
5 be eligible for appointment.

6 THE CHAIRMAN: Delegate Malkus.

7 DELEGATE MALKUS: Did I understand you to say  
8 that he would be eligible?

9 DELEGATE MUDD: Yes.

10 DELEGATE MALKUS: I saw you nod in affirm-  
11 mance,. Would that mean, of course, that this other man  
12 would then be selected as judge?

13 DELEGATE MUDD: Not necessarily. He would  
14 be eligible for appointment and if he was the best of the  
15 best, I am confident he would be on the list.

16 THE CHAIRMAN: Delegate Malkus.

17 DELEGATE MALKUS: My last question. Do you  
18 or do you not think that the people are qualified to  
19 decide who their judges should be?

20 DELEGATE MUDD: Under this method, they are  
21 better qualified then to vote than under the present



1 system we have in my judgment.

2 THE CHAIRMAN: Do you have a further question?

3 DELEGATE MALKUS: His answer, Mr. President,  
4 I can't understand it.

5 THE CHAIRMAN: You can debate his answer  
6 later. Do you have another question now?

7 DELEGATE MALKUS: I would like to ask him the  
8 question again.

9 THE CHAIRMAN: Rephrase your question.

10 DELEGATE MALKUS: Don't you think that in the  
11 event that there are several attorneys in an area that  
12 would like to be judge, that after the appointment is  
13 made, if they do not succeed, that the people in a  
14 democracy should have the right to say which of those  
15 attorneys should be their judge?

16 DELEGATE MUDD: I can only answer the  
17 question this way, Senator Malkus. If a judge appointed  
18 to a vacancy at the time he must run for election is  
19 then subjected to live opposition from two competing  
20 lawyers, in my personal opinion, I think it is the  
21 feeling of a majority of the committee, that sort of





1 political campaign subjects those aspiring to the office  
2 including the incumbent to the type of exposure and  
3 competition at the polls which is unbecoming the  
4 judiciary and in our view militates against the best  
5 administration of justice.

6 THE CHAIRMAN: Delegate Malkus.

7 DELEGATE MALKUS: Mr. President, I said I  
8 wasn't going to ask any more questions but when the  
9 Chair talks like he does about politics, then I am going  
10 to have to ask him several other questions.

11 THE CHAIRMAN: You may be permitted to ask  
12 him a question. Just proceed, Delegate Malkus.

13 DELEGATE MALKUS: Thank you, sir, you are very  
14 kind.

15 Is there any<sup>more</sup>/politics anywhere in the State  
16 of Maryland than exists in the Maryland Bar Association  
17 and among lawyers of Maryland?

18 DELEGATE MUDD: The testimony before our  
19 committee from a distinguished witness was there was more  
20 in the Methodist Church than in the Bar Association.  
21 (Laughter.) I have forgotten who the witness was.



1 THE CHAIRMAN: Delegate Malkus.

2 DELEGATE MALKUS: Answering what he has just  
3 said, I made that statement. (Laughter.) I don't  
4 believe I made it exactly that way. I didn't say there  
5 was more in the Methodist Church. I said there was just  
6 as much in the Methodist Church as among lawyers.

7 DELEGATE MUDD: I stand corrected . That is  
8 exactly what you said.

9 DELEGATE MALKUS: Thank you, sir.

10 THE CHAIRMAN: Do you have a further question?

11 DELEGATE MALKUS: I presume, Mr. President, I  
12 will have an opportunity to speak later and ask further  
13 questions later.

14 THE CHAIRMAN: You certainly will have plenty  
15 of opportunity to speak. Do you have any further questions  
16 now?

17 DELEGATE MALKUS: Not until Monday, sir.

18 THE CHAIRMAN: Delegate Dorsey.

19 DELEGATE DORSEY: Will the Chairman yield for  
20 a question?

21 THE CHAIRMAN: You may ask any question.



1 DELEGATE DORSEY: Isn't Section 5.13 through  
2 5.25 in sum and substance the Niles Plan?

3 DELEGATE MUDD: Yes, I think so.

4 DELEGATE DORSEY: Hasn't that been submitted  
5 to the General Assembly of Maryland?

6 DELEGATE MUDD: It may have.

7 DELEGATE DORSEY: Hasn't it twice been  
8 rejected by the people of Maryland through their duly-  
9 elected representatives in the Maryland Legislature?

10 THE CHAIRMAN: Delegate Dorsey, the Chair  
11 feels obliged to call to your attention and to the  
12 attention of the Assembly that the last time the so-  
13 called Niles Plan was submitted to the General Assembly,  
14 it was referred by the General Assembly to the Convention.  
15 It has been referred to this Convention by the General  
16 Assembly.

17 DELEGATE DORSEY: Prior to that, didn't the  
18 General Assembly reject it?

19 DELEGATE MUDD: The only legislative history  
20 I am aware of, Delegate Dorsey, is that at the 1966  
21 Session, I think part of the plan was passed or adopted





1 by the House of Delegates, then went to the Senate, from  
2 the Senate was referred to our Judicial Branch Committee  
3 by the Senate Judiciary Committee.

4 DELEGATE DORSEY: Aren't you now proposing to  
5 write into the Constitution of Maryland what has been  
6 rejected by the General Assembly?

7 DELEGATE MUDD: No, I don't know this has  
8 been rejected.

9 THE CHAIRMAN: Delegate Dorsey.

10 DELEGATE MUDD: I may not be up on my  
11 legislative history, but I have no knowledge this plan has  
12 been rejected by the legislature.

13 DELEGATE DORSEY: Thank you, sir.

14 THE CHAIRMAN: Any further questions?  
15 Delegate Willoner.

16 DELEGATE WILLONER: Mr. Chairman, in Section  
17 5.13 you use the term "residence at the time of his  
18 appointment." I was wondering by that do you mean the  
19 judge of the Superior Court has to be a resident prior  
20 for some period of time prior to his appointment. If  
21 you did mean that, why didn't you use a period of time?



1 DELEGATE MUDD: Which part of Section 5.13?  
2 Line 2 or Line 18? We say a person shall have been a  
3 citizen of the State and member of the Bar for at least  
4 five years immediately prior to his nomination.

5 THE CHAIRMAN: Delegate Willoner.

6 DELEGATE WILLONER: On Line 26, "to be  
7 eligible for nomination and appointment as a judge of  
8 Superior Court, a person shall be resident of the county  
9 where the Superior Court vacancy exists." What do you mean  
10 by that?

11 DELEGATE MUDD: You mean as between resident  
12 and citizen and domicile?

13 THE CHAIRMAN: I don't think so, Delegate  
14 Mudd. The question you may have lost before was whether  
15 you meant resident only at the moment of appointment  
16 or for some time prior to appointment. Is that the  
17 question?

18 DELEGATE WILLONER: Essentially.

19 DELEGATE MUDD: At the moment of appointment.

20 DELEGATE WILLONER: At the moment of appointment.  
21 Is it contemplated lawyers from other parts of the state



1 would be eligible for Superior Court judgeships throughout  
2 the state, I mean, in a particular county?

3 DELEGATE MUDD: If they were resident at the  
4 time of appointment.

5 THE CHAIRMAN: Delegate Willoner.

6 DELEGATE WILLONER: In other words, that all  
7 the lawyers of the state will be eligible for any  
8 Superior Court judgeship except that lawyer who is  
9 appointed must be a resident at the time of his appointment.

10 DELEGATE MUDD: Of the political subdivision  
11 in which the vacancy occurs.

12 DELEGATE WILLONER: Another question in Section  
13 5.16. In the telephone conversations you had with people  
14 in Missouri, it seemed a rather appealing idea that  
15 the terms overlap in that when the members of the Commission  
16 were appointed, they were, and commission member resigned  
17 or died, they would be appointed for another term,  
18 full term, so that the terms overlap.

19 Do you contemplate that the terms of the  
20 members of the Appellate Nominating Commission would be  
21 handled in the same manner so they would not be all





1 appointed at the same time and if anybody resigned, they  
2 would only serve out the balance of the term?

3 DELEGATE MUDD: That was the feeling in our  
4 committee although, of course, these commissions must  
5 be inaugurated initially for the same terms.

6 THE CHAIRMAN: Delegate Willoner.

7 DELEGATE WILLONER: In 5.16 why did you feel  
8 it was not necessary to state the term of the commission  
9 member and leave it to the legislature? Why did you use  
10 the distinction between the two procedures?

11 DELEGATE MUDD: Well, because we are dealing  
12 there with nominations to fill vacancies in districts to  
13 be set up by the legislature. It just seemed more orderly  
14 procedure in setting up districts that number and  
15 composition of the commissions and the term should be as  
16 prescribed by the legislature.

17 DELEGATE WILLONER: Thank you.

18 THE CHAIRMAN: Any other questions?  
19 Delegate Beall.

20 DELEGATE BEALL: Mr. Chairman, in Section 5.13,  
21 as I understand it, it says that the committee must appoint



1 and nominate two but not more than five members as can-  
2 ditates for a vacancy, is that correct?

3 DELEGATE MUDD: Correct.

4 DELEGATE BEALL: Suppose the Governor doesn't  
5 want to appoint any one of those five? What recourse  
6 does he have?

7 DELEGATE MUDD: None.

8 DELEGATE BEALL: None. Do you know in recent  
9 years in Maryland where the Bar Association did not  
10 recommend certain lawyers that are now sitting on the  
11 Bench?

12 DELEGATE MUDD: You say did that happen?

13 DELEGATE BEALL: Has it happened in your  
14 memory?

15 DELEGATE MUDD: The testimony before our  
16 committee was to the contrary that only in one instance  
17 had a judge been appointed who was not on a current list  
18 and in that instance the appointee had been on a <sup>list</sup> previously  
19 submitted for another vacancy.

20 THE CHAIRMAN: Delegate Beall.

21 DELEGATE BEALL: Then he was on some list?



1 DELEGATE MUDD: Yes.

2 DELEGATE BEALL: Is there only one, I ask this  
3 as a layman because I don't know, is there only one  
4 group, for instance, are there several groups of lawyers  
5 who are in organizations?

6 DELEGATE MUDD: Yes.

7 DELEGATE BEALL: Would there be only one  
8 group to submit this name?

9 DELEGATE MUDD: Under our proposal there would  
10 be only one nominating commission.

11 DELEGATE BEALL: How are they named?

12 DELEGATE MUDD: It is all detailed here.

13 DELEGATE BEALL: President of the Bar  
14 Association, of the Maryland Bar Association, names a  
15 Nominating Committee.

16 DELEGATE MUDD: No.

17 DELEGATE BEALL: Who does?

18 DELEGATE MUDD: The Governor appoints two of  
19 them and two are elected from lawyers of the state.

20 DELEGATE BEALL: From all the lawyers or just  
21 from the organization?





1 DELEGATE MUDD: All the lawyers.

2 DELEGATE BEALL: All five thousand some odd?

3 DELEGATE MUDD: Yes.

4 DELEGATE BEALL: Where does the other one come  
5 from?

6 DELEGATE MUDD: He is the judge.

7 DELEGATE BEALL: The chief judge of what, the  
8 Court of Appeals?

9 DELEGATE MUDD: Appointed by the Court of  
10 Appeals.

11 DELEGATE BEALL: Thank you.

12 THE CHAIRMAN: Any other delegates?  
13 Delegate Blair.

14 DELEGATE BLAIR: Delegate Mudd, On page 6,  
15 Section 5.21, term of office of judge, Line 24, Line  
16 45, that particular provision disturbs me. Does it not  
17 appear that this provision would foster the electioneering  
18 by a judge or currying of favor by a judge for his return  
19 to office.

20 DELEGATE MUDD: You mean among the lawyers?

21 DELEGATE BLAIR: Yes, among lawyers.



1 DELEGATE MUDD: Yes, we think he will do that  
2 by being a good judge.

3 DELEGATE BLAIR: Independent of him being a  
4 good judge, it seems that particular provision to me  
5 puts the lawyer on a spot. I don't think the provision  
6 is a good one because of the fact that --

7 THE CHAIRMAN: Delegate Blair, this is not the  
8 time for debate. If you have a question, you may put it.

9 DELEGATE BLAIR: Did your committee consider  
10 this in the sense it was possibly a bad provision to  
11 put in.

12 DELEGATE MUDD: Yes, there was some considerable  
13 discussion of this in our committee and it is objectionable  
14 to several of the witnesses who appeared before our  
15 committee. I would say primarily the objection came  
16 from judges, not the lawyers.

17 The idea is that this secret poll of lawyers  
18 without being identified is a constructive information  
19 that can be furnished when published to the voters in  
20 evaluating how they might vote for or against an  
21 incumbent judge. We feel it is a service to the voters



1 that the lawyers who should know the most about an  
2 incumbent judge can through secret ballot make available  
3 for publication for information and guidance of the public  
4 in exercising their yes or no vote for an incumbent judge.  
5 That is the purpose.

6 THE CHAIRMAN: Any further questions? Delegate  
7 Smith, Agnes Smith.

8 DELEGATE AGNES SMITH: Delegate Mudd, in  
9 Section 5.20, Line 18 you have an office in a political  
10 party. Would you define that, please.

11 DELEGATE MUDD: You mean a nonjudicial member  
12 of a commission may not hold any public office for  
13 profit or office in a political party while a member of  
14 a commission?

15 DELEGATE AGNES SMITH: Yes.

16 DELEGATE MUDD: You want me to define what?

17 THE CHAIRMAN: What is an office in a  
18 political party, I think, is her question.

19 DELEGATE MUDD: If he is a member of the  
20 Central Committee or Treasurer of the political party.  
21 That is the type of office we had in mind.





1 THE CHAIRMAN: Any further questions?  
2 Delegate Mitchell.

3 DELEGATE MITCHELL: Delegate Mudd, in Section  
4 5.14, beginning with Line 45, there is the provision  
5 that if the Governor fails to appoint one of the nominees  
6 within 60 days after receiving the list, his power to  
7 make the appointment shall end and the chief judge of the  
8 Court of Appeals shall appoint one of the nominees.

9 Did your committee consider whether  
10 this was a violation of the doctrine of separation of  
11 powers? Isn't it unusual for a judge to appoint a judge?

12 DELEGATE MUDD: No. As a matter of fact, as  
13 I think I mentioned in connection with the appointment  
14 of commissioners, in Illinois, I believe, it is the judges  
15 of the trial tier appoint the judges sitting at the  
16 next tier, but I think, Delegate Mitchell, the possibility  
17 of this coming to pass under the mechanics of this  
18 proposal would be most remote.

19 The Governor will have from two to five  
20 names from which to select and it is really not in there  
21 in my judgment to give the judge the power of appointment,



1 but just to provide some manner of filling the vacancy in  
2 the event the Governor did not exercise the appointive  
3 power.

4 THE CHAIRMAN: Delegate Mitchell.

5 DELEGATE MITCHELL: Why put it in at all?  
6 After all, although it has to be done, there are a lot of  
7 unconstitutional things done, sometimes, even by judges.  
8 It would seem to me it is better not to put that in at  
9 all because I think it is highly irregular for a judge  
10 to appoint a judge.

11 DELEGATE MUDD: If we didn't have that  
12 provision in there and the Governor stood by and didn't  
13 appoint you could have a vacancy that was never filled.

14 DELEGATE MITCHELL: Not if there is a mandate  
15 that he shall appoint within 60 days. You say if the  
16 Governor does not appoint. Did you consider language that  
17 would give a mandate to the Governor to appoint within 60  
18 days?

19 DELEGATE MUDD: Yes. Line 38 says the Governor  
20 shall fill a vacancy.

21 THE CHAIRMAN: Do you have a further question,



1 Delegate Mitchell?

2 DELEGATE MITCHELL: But then you qualify it by  
3 your limit, 60-day limit, doesn't follow the mandate.  
4 The Governor shall fill a vacancy within 60 days, it  
5 seems to me it should be. Did you consider putting that  
6 up by the Governor shall fill a vacancy within 60 days?

7 DELEGATE MUDD: I think it implies it in the  
8 over-all consideration of the Section but may I yield to  
9 Judge Henderson.

10 THE CHAIRMAN: Delegate Henderson, can you  
11 reply further to the inquiry?

12 DELEGATE HENDERSON: I should like to add  
13 briefly to this. I think our attention was brought to  
14 a case in one of the other states in which an impasse  
15 developed where the Governor was displeased with the  
16 nominees specified by the commission and simply neglected  
17 to appoint, refused to appoint. There was no way to  
18 compel them to do so.

19 This provides an alternative so that if the  
20 Governor does not appoint, then the duty devolves upon the  
21 Chief Judge of the Court of Appeals.





1 I think that's a very unusual thing.  
2 If I might say one other word about the alleged impropriety  
3 of a judge appointing a judge, that the whole English  
4 system which has existed for centuries and is recognized  
5 as one of the best in the world, I believe, all of the  
6 judges except one throughout the English system are  
7 appointed by the highest court, the chief judge of their  
8 highest court so it is not without precedent. It would  
9 be a rare occurrence.

10 THE CHAIRMAN: Delegate Mitchell.

11 DELEGATE MITCHELL: Would Judge Henderson  
12 ask a further question?

13 DELEGATE HENDERSON: Yes.

14 DELEGATE MITCHELL: England does not have a  
15 constitution and does not provide for the same separation  
16 of powers as we have provided.

17 Isn't this a violation of the doctrine of  
18 separation of powers?

19 THE CHAIRMAN: Delegate Henderson.

20 DELEGATE HENDERSON: I don't believe it is.  
21 Actually the separation of powers is not such an



1 inflexible system as we sometimes imagine. In other  
2 words, the administrative agencies attached to the  
3 executive are given rule-making power in many instances  
4 which is of a quasi-judicial character.

5 We can see through here there are shared  
6 powers throughout all the different departments. In  
7 this one small particular it is merely providing an alter-  
8 native in case the Governor fails to perform his duty.  
9 It is really, it is something like a mandate to the court  
10 to do it if the Governor doesn't. It is very much like  
11 the enforcement provision of reapportionment, I suggest.

12 DELEGATE MITCHELL: A further question of  
13 Delegate Mudd. Does 5.16 contemplate a trial court  
14 nominating commission in each district?

15 DELEGATE MUDD: As provided by the number  
16 and composition of commissions and terms of members shall  
17 be prescribed by law. That is left to the legislature.

18 THE CHAIRMAN: Delegate Mitchell.

19 DELEGATE MITCHELL: Did your committee  
20 contemplate there would be a trial court nominating  
21 commission in each district?



1 THE CHAIRMAN: What do you mean by district,  
2 Delegate Mitchell?

3 DELEGATE MITCHELL: In which the trial courts  
4 shall commit.

5 DELEGATE MUDD: Not necessarily. We did not  
6 contemplate there would be a nominating commission for  
7 every political subdivision if that answers your question.

8 DELEGATE MITCHELL: It is evident that some  
9 of your districts will comprise more than one political  
10 subdivision.

11 DELEGATE MUDD: It is entirely possible that  
12 some of the districts set up by the legislature may  
13 comprise more than one county, yes.

14 DELEGATE MITCHELL: Therefore, did your committee  
15 contemplate rather one trial court nominating commission  
16 chosen from all of the state to nominate candidates for a  
17 position in a certain district?

18 DELEGATE MUDD: No, we envisioned more than  
19 one for the state.

20 THE CHAIRMAN: Delegate Mitchell.

21 DELEGATE MITCHELL: If you envisioned more





1       than one, how many?

2               DELEGATE MUDD: Without knowing how many  
3 judges and how many districts were going to be created  
4 by the legislature, we did not project our thinking to that  
5 phase of the matter and left it to the wisdom of the  
6 legislature. They may divide the state into divisions  
7 as they see fit, larger in some areas, smaller in others.  
8 It is just a detail we did not feel we should deal with.

9               THE CHAIRMAN: Delegate Mudd, if the Chair  
10 may restate the question posed by Delegate Mitchell,  
11 I think she is asking something like this. Under the  
12 plan it is contemplated that the legislature will create  
13 districts for the district court. She understands that  
14 the legislature will provide the number of nominating  
15 commissions.

16              She asks whether our committee contemplated  
17 that in fulfilling these duties, the legislature would  
18 necessarily provide a trial court nominating commission  
19 for every district it provided.

20              DELEGATE MUDD: Yes.

21              THE CHAIRMAN: Delegate Mitchell.



1 DELEGATE MITCHELL: Will that accompany your  
2 report? Because it seems to me without that as a part  
3 of the report, we might wind up with just one trial court  
4 nominating commission as we have just one appellate  
5 court nominating commission, which would be unfair to the  
6 various districts.

7 DELEGATE MUDD: I agree it would seem unfair  
8 to me and it just never occurred within the discussion in  
9 our committee that such a situation would result as you  
10 think possible.

11 THE CHAIRMAN: Delegate Mitchell, the Chair  
12 suggests that part of your purpose may be accomplished  
13 by reason of the fact that the language used is in  
14 the plural, it refers to commissions, not commission.  
15 Delegate Sollins.

16 DELEGATE SOLLINS: Delegate Mudd, with  
17 regard to Section 5.13, what was the committee  
18 rationale with regard to prohibiting a man who has  
19 his office and practice in one county but resides in  
20 another from being eligible to be a candidate for judge?

21 DELEGATE MUDD: You mean why did we eliminate



1        qualifications of practicing law in the area as making him  
2        eligible for appointment?

3                DELEGATE SOLLINS: If he resides in the other  
4        county.

5                DELEGATE MUDD: My recollection of the view  
6        of the committee was that the judge sitting in an area  
7        should reflect the culture perhaps of the area for which  
8        he was administering justice and that the limitations of  
9        residence was more realistic and practical than the  
10       possible double eligibility rule of residence or principal  
11       office.

12               THE CHAIRMAN: Delegate Sollins.

13               DELEGATE SOLLINS: What consideration did the  
14       committee give to a lawyer perhaps who practiced in one  
15       county for many, many years, has great knowledge of the  
16       area, all his clients come from that particular county,  
17       yet, nevertheless, resides in another county?

18               DELEGATE MUDD: We recognized and it was pointed  
19       out to us rather persuasively that under those circum-  
20       stances you indicated the Bench in some instances could  
21       be deprived of talent of a very capable lawyer. But,





1 nevertheless residence was a more practical requirement.

2 THE CHAIRMAN: Delegate Sollins.

3 DELEGATE SOLLINS: Delegate Mudd, another  
4 question in regard to Section 5.17. Did the committee  
5 give any consideration to providing for election of  
6 lawyers to the nominating commission by secret ballot.

7 DELEGATE MUDD: No, I don't recall that the  
8 matter of secret ballot was ever suggested in connection  
9 with the election of the lawyers for the nominating  
10 commission.

11 THE CHAIRMAN: Delegate Sollins.

12 DELEGATE SOLLINS: Do you know what the  
13 practice is in other states that have this method?

14 DELEGATE MUDD: No, I don't recall any informa-  
15 tion adduced to our committee which would commit there  
16 was any secret ballot.

17 THE CHAIRMAN: Delegate Sollins, the Chair  
18 is not sure he understood your question or the answer  
19 and I am interested in only having the record straight.  
20 Would you restate it? Did the committee consider --

21 DELEGATE SOLLINS: My question was with



1 regard to Section 5.17, the lawyer member of the  
2 nominating commission. I wanted to know what considera-  
3 tion the committee gave to having the lawyer members  
4 elected by secret ballot.

5 THE CHAIRMAN: I understood that but I did not  
6 know whether there was some implication that it was  
7 prohibited in the light of the last section of the  
8 section. Delegate Sollins.

9 DELEGATE SOLLINS: I understand it is not  
10 prohibited but I was curious why the committee did not  
11 put it in as a constitutional revision.

12 THE CHAIRMAN: So the record will be  
13 straight, let me state it more clearly. I think the  
14 question really is why did not the committee consider  
15 requiring in the constitution that the election of  
16 lawyer members of the commission be by secret ballot.  
17 Is that the question, Delegate Sollins?

18 DELEGATE SOLLINS: That is correct.

19 DELEGATE MUDD: The answer is it could be  
20 prescribed by rule but we did not consider it to the  
21 best of my recollection as necessary to be put into the



1 constitution.

2 THE CHAIRMAN: Delegate Macdonald.

3 DELEGATE MACDONALD: Delegate Mudd, referring  
4 your attention to Page 6, Line 45, taking after pool by  
5 secret ballot. What is meant by the term secret ballot,  
6 Mr. Mudd? Does that contemplate the ballot will be  
7 signed or unsigned?

8 DELEGATE MUDD: The context we used in our  
9 committee to the best of our ability, Delegate Macdonald,  
10 was the ballot that would not be, could not be identified  
11 with the party who voted and probably would be  
12 accomplished by a ballot being returned in a blank  
13 envelope without identifying the sender or the party  
14 who exercised the vote. That is the extent to which we  
15 discussed in our committee, as I recollect.

16 THE CHAIRMAN: Delegate Macdonald, do you have  
17 a further question?

18 DELEGATE MACDONALD: Thank you.

19 THE CHAIRMAN: Delegate Storm.

20 DELEGATE STORM: Referring back to Mr. Sollins'  
21 question on residence, how long do you think it might





1 be for an attorney to be able to become familiar with  
2 the culture and so on in the county? How long should he  
3 reside there?

4 As I understood, there have been  
5 some judges who have moved in order to get an appointment.  
6 I thought this was a nice idea. But I wondered how long  
7 a residence was required.

8 DELEGATE MUDD: At the time of appointment  
9 is the only, a resident of the state five years prior to  
10 appointment but a resident of the district or county  
11 at the time of appointment.

12 THE CHAIRMAN: Delegate Blair.

13 DELEGATE BLAIR: Mr. Chairman, can you tell  
14 me how a lay commission can evaluate the judicial  
15 qualifications of a candidate for judge?

16 DELEGATE MUDD: Well, I feel in answer to that  
17 question, Delegate Blair, that it is an extremely difficult  
18 matter to evaluate the talents of a lawyer as a judge.  
19 In the view of the committee there are capable laymen who  
20 by virtue of knowledge of people in the community or  
21 exposure to the court processes could have a very valuable



1 opinion and a worthwhile opinion in evaluating the  
2 judicial temperament, community interest, and talents  
3 that go to make up a good judge.

4 THE CHAIRMAN: Delegate Blair.

5 DELEGATE BLAIR: This is acting on the  
6 basis of hearsay testimony, isn't it?

7 DELEGATE MUDD: What about those who want the  
8 right to exercise the vote?

9 THE CHAIRMAN: Delegate Blair, do you have a  
10 further question?

11 DELEGATE BLAIR: No, sir.

12 THE CHAIRMAN: Delegate Raley.

13 DELEGATE RALEY: Mr. Chairman, I am sorry but  
14 on this nominating committee I just am not quite clear.  
15 Let's use a specific example. Charles County, your county,  
16 has a superior, or will have a Superior Court judge,  
17 when Judge Digges retires. The nominating committee will  
18 be set by law, as I understand it. But will the nominating  
19 committee be from Charles County or will it be from a  
20 district of St. Mary's, Charles, and Talbot or from the  
21 state or is it as it will be set by law?



1 THE CHAIRMAN: Delegate Raley, proceed.

2 DELEGATE RALEY: There is nothing in here  
3 that actually precludes having just one Superior Court  
4 nominating commission for the state, is that correct?

5 DELEGATE MUDD: It might appear that we  
6 drafted this section after some votes on other sections  
7 and specifically eliminated any guide lines to the  
8 legislature. They have absolute control of the situation.

9 THE CHAIRMAN: Delegate Raley.

10 DELEGATE RALEY: Chairman Mudd, is it your  
11 intention that there would be at least more than one  
12 nominating commission or regional nominating commission  
13 oer per county nominating commissions? What is the in-  
14 tention of the committee.

15 DELEGATE MUDD: It was the thought of the  
16 committee that there would certainly be more than one  
17 nominating commission and we used the word commissions,  
18 as the President pointed out. It was not our expectation  
19 that there would be a nominating commission for every  
20 political subdivision.

21 THE CHAIRMAN: Delegate Bennett.





1 DELEGATE BENNETT: Delegate Mudd, referring  
2 to Section 5.14, you say that the list should contain  
3 no fewer than two nor more than five eligible persons.

4 Would you indulge me by giving me the benefit  
5 of the committee's thinking on how you arrived at that  
6 figure of as few as two?

7 DELEGATE MUDD: To accommodate Delegate Grant's  
8 Garrett County.

9 THE CHAIRMAN: Delegate Bennett, can I ask you  
10 further whether or not in your considerations it would be  
11 possible for the Governor to return the list even if it  
12 came from Garrett County to ask for a larger number of  
13 nominees? Is he to return the list?

14 DELEGATE MUDD: It is not so provided but I  
15 would certainly assume such procedure might be necessary  
16 in the event of, or obviously if the commission sent up  
17 a list of two names and something should happen to both  
18 those nominees before either had been appointed, it would  
19 be an empty list and there would have to be some correc-  
20 tive procedures. But it is not contemplated that the  
21 Governor could deviate from the list or not separate the



1 list except in some unforeseen circumstance.

2 THE CHAIRMAN: Delegate Bennett.

3 DELEGATE BENNETT: But think he could return  
4 the list to the nominating committee.

5 DELEGATE MUDD: There is no reason that occurs  
6 to me at the moment except if the list was determined  
7 not to be a list such as if both nominees were dead or  
8 something of that nature before he made the appointment.

9 THE CHAIRMAN: I think the Chair can paraphrase  
10 the question of what Delegate Bennett is getting at which  
11 is whether the Governor could return the list if he didn't  
12 like it and was not satisfied with it? Is that your  
13 question?

14 DELEGATE BENNETT: Partly it.

15 DELEGATE MUDD: The answer to that is  
16 absolutely not and if he doesn't exercise his power of  
17 appointment within the list, it is within the power of  
18 the chief judge to make the appointment.

19 THE CHAIRMAN: Delegate Bennett.

20 DELEGATE BENNETT: As I understand it, as it  
21 operates in the City of St. Louis and Kansas City under



1 the so-called Missouri Plan, the Governor is able to  
2 return the list when there are not a sufficient number  
3 of candidates on the list. If we are following that  
4 plan, I should think he could return it.

5 THE CHAIRMAN: What do you mean by not sufficient  
6 number, not sufficient to fill the vacancy?

7 DELEGATE BENNETT: No, not more than two. He  
8 can return it if there is not a minimum number.

9 DELEGATE MUDD: Delegate Bennett, may I amplify  
10 my answer to your first question. Our minimum of two  
11 actually was geared to not bring about an impossible  
12 situation in a small or area where there were very few  
13 lawyers. I illustrated it by Garrett County. If there  
14 are only six members of the Bar, it would seem at the time  
15 of a vacancy, there it would seem impractical to require  
16 a list of not less than five.

17 THE CHAIRMAN: Delegate Bennett.

18 DELEGATE BENNETT: Yes, sir, but on the other  
19 hand, if it were Montgomery County with, what, 2200  
20 lawyers in it, the nominating committee sent up a list  
21 of only two candidates, it would seem to me within reason  
the Governor could return it and ask for a larger number





1 of candidates.

2 THE CHAIRMAN: What is your question?

3 DELEGATE BENNETT: Is that possible?

4 DELEGATE MUDD: No, sir, we think two to five  
5 will be the best of the best.

6 THE CHAIRMAN: Delegate Pullen.

7 DELEGATE PULLEN: This is the question to  
8 Chairman Mudd but I would like to make a brief statement  
9 first.

10 I am in general sympathy with the program,  
11 well, I rather like it. However, there is a question  
12 that Delegate Mitchell asked that I would like to follow  
13 up. I was told the other day that the judiciary could  
14 not compel the legislature to carry out a mandate of the  
15 Constitution. Nor could the judiciary enact laws in the  
16 absence of any action on the part of the legislature.

17 Now the question here is: Does that principle  
18 of law and constitutionality still hold in this case?  
19 That is, when the Governor refuses or fails to act on  
20 the mandate of the constitution, that a judge shall be  
21 appointed within a certain number of days. I left out



1 something.

2 I was told the only recourse is the ballot.  
3 Is that true in this case?

4 DELEGATE MUDD: No, because we have provided  
5 here as pointed out by Delegate Mitchell, Delegate  
6 Pullen, that if the Governor fails to appoint within the  
7 60 days, the chief judge of the Court of Appeals shall  
8 have the power of appointment.

9 THE CHAIRMAN: Delegate Pullen.

10 DELEGATE PULLEN: Is not that an invasion of  
11 the powers of the executive?

12 DELEGATE MUDD: I can only cite you the  
13 reasoning advanced by Delegate Henderson in whose judgment  
14 I have implicit confidence and he says no.

15 THE CHAIRMAN: Delegate Pullen.

16 DELEGATE PULLEN: Judge Henderson, the same  
17 principle would apply? If the Legislature failed to  
18 act on a mandate of the Constitution, could the judiciary  
19 take action?

20 THE CHAIRMAN: Delegate Henderson, can you  
21 reply to the question put by Delegate Pullen?



1                   DELEGATE HENDERSON: I think the only instance  
2 I recall in which such a situation developed was over  
3 reapportionment. That, of course, is a very exceptional  
4 case.

5                   This business of saying that where an office  
6 must be filled, it can be filled in the alternative by  
7 someone else is, I think, not a departure from general  
8 principle. I think that's not an unusual provision to  
9 provide against the possibility of having a stalemate  
10 and impasse so that a vital office remains unfilled.  
11 That is exactly the situation which occurred in at least  
12 one state where such an impasse did develop. That's the  
13 reason we sought to cover it here.

14                  THE CHAIRMAN: Delegate Pullen.

15                  DELEGATE PULLEN: I don't think we ought to  
16 argue this case but I cannot see the difference in logic.

17                  THE CHAIRMAN: You have opportunity to debate  
18 it later, Delegate Pullen.

19                  DELEGATE PULLEN: Can I put it in the form of a  
20 question?

21                  THE CHAIRMAN: State your question.





1           DELEGATE PULLEN: What is the difference in the  
2 courts acting in one case and not in the other, one when  
3 the Governor is concerned and one in which the legislature  
4 is concerned.

5           THE CHAIRMAN: Proceed, Delegate.

6           DELEGATE MUDD: I think it is clear, Delegate  
7 Pullen, that in one instance you are speaking of  
8 the court's enacting the law and in the other case you  
9 are speaking of the court exercising the appointive  
10 function. I think there is quite a difference.

11          THE CHAIRMAN: Delegate Chabot.

12          DELEGATE CHABOT: Section 5.24 forbids a  
13 judge to run for elective office other than the judicial  
14 office he then holds.

15                 Would that forbid a judge from running  
16 for constitutional convention delegate too?

17          DELEGATE MUDD: You raise most interesting  
18 questions, sir. Are we going to have another one within  
19 our lifetime? I won't answer it if we are.

20          THE CHAIRMAN: Delegate Chabot.

21          DELEGATE CHABOT: I believe that there is a



1       likelihood that this constitution will contain provisions  
2       for the people to determine every 20 years or so whether  
3       or not there shall be a Convention.

4               DELEGATE MUDD: Didn't the Attorney General  
5       define our position before we ran for election with  
6       respect to legislature or judges? I don't know what  
7       his determination was, whether this was a political office  
8       we hold or not.

9               THE CHAIRMAN: The term was somewhat different.  
10      The term there was office of profit or trust. The  
11      term here is elective office.

12              DELEGATE MUDD: Do you agree the position of  
13      delegate is not a position of profit? (Laughter.)

14              THE CHAIRMAN: Delegate Chabot.

15              DELEGATE CHABOT: I am concerned with the  
16      fact that you used a different term. You have used  
17      office of profit several places in this group of sections  
18      and in fact I believe you use it later on in this very  
19      section. Yet on Line 32 where the same term might have  
20      been used, you used a different term.

21              I take it there was deliberate intention to



1 have a different meaning.

2 THE CHAIRMAN: May I paraphrase the question?  
3 Delegate Mudd, I think Delegate Chabot is asking whether  
4 the committee intended to apply a different rule in Line  
5 39 of Section 5.24, by using the term "elective office"  
6 than would be applied elsewhere where the term "office of  
7 profit" is used.

8 DELEGATE MUDD: Yes, I think we did.

9 THE CHAIRMAN: Further questions, Delegate  
10 Chabot?

11 DELEGATE CHABOT: Yes, sir. With regard  
12 to Section 5.25, the Court of Appeals is given the power  
13 to either remove or to censure, but the Commission on  
14 Judicial Disabilities is given the power only to recommend  
15 a removal.

16 Was there some reason why the commission ought  
17 not be given the power to recommend merely a censure?

18 DELEGATE MUDD: We debated that matter quite  
19 some time, Delegate Chabot, and had a great deal of  
20 difficulty with the power to censure. We ended up with  
21 drafting in that manner because we thought it was rather





1       difficult and impractical result to have a committee  
2       on disabilities make no other recommendations to the  
3       Court of Appeals than a recommendation of censure.

4               We thought it was a better accommodation of  
5       the over-all situation for the case not to go to the Court  
6       of Appeals unless in the opinion of the Committee on  
7       Judicial Disability the error was serious enough to  
8       warrant retirement or removal, then, however, the  
9       Court of Appeals felt to the contrary, they might censure.

10              THE CHAIRMAN: Further question, Delegate  
11       Chabot?

12              DELEGATE CHABOT: Yes, I have one more, sir.  
13       With regard to Section 5.17, in response to Delegate  
14       Sickles, you indicated that by a rule those lawyers who  
15       would be eligible to be electors for the lawyer  
16       members of the nominating commissions might be limited to  
17       those engaged in the practice of law as distinguished from  
18       those who acted but were presently engaged in other  
19       occupations.

20              Would it also be possible by rule to limit  
21       the category of lawyer electors to those who are members



1 of the Maryland State Bar Association?

2 DELEGATE MUDD: It would be possible, yes.

3 THE CHAIRMAN: Delegate Chabot, do you have  
4 a further question?

5 DELEGATE CHABOT: No.

6 THE CHAIRMAN: Are there any further questions  
7 of the committee chairman?

8 DELEGATE KOSS: Chairman Mudd, with  
9 reference to 5.13, you use the word regiment. Was it  
10 the committee's intention that the use of the word  
11 resident be interpreted as resident for purposes of  
12 voting?

13 The reason I ask that is that under Suffrage  
14 and Elections S&E-2, the General Assembly has the broad  
15 mandate to define residence for the purpose of voting.  
16 I just wanted to make clear whether the same, the term  
17 resident, as applied in that section, would also be used  
18 here or what the committee intention was.

19 DELEGATE MUDD: All I can say is the committee  
20 did debate the choice of the word resident, citizen, also  
21 considered the word domiciled. We finally decided upon the



1 word resident as being most descriptive and most restric-  
2 tive, I think, in our language.

3 THE CHAIRMAN: Delegate Koss.  
4 what

4 DELEGATE KOSS: Can I ask/the restriction  
5 was the committee intended?

6 DELEGATE MUDD: Actual residence in. You  
7 would be a voter if you said voting resident, you  
8 could actually have a voting residence here and live for  
9 the greater part of the time elsewhere.

10 THE CHAIRMAN: Delegate Koss.

11 DELEGATE KOSS: Well, I have great sympathy  
12 for Delegate Grant in Garrett County. I wondered if  
13 a lawyer for 20 years maintained a summer home and spent  
14 four months a year on Deep Creek Lake would be considered  
15 a resident?

16 THE CHAIRMAN: So do I have sympathy  
17 for him. Delegate Rybczynski.

18 DELEGATE RYBCZYNSKI: Mr. Chairman, I have  
19 been going over some of the material previously furnished  
20 to all of us and specifically I am on this telephone  
21 conversation. I am trying to pin down one of your previous





1 statements made earlier today. You said this is the plan  
2 basically used in Missouri. Is this correct?

3 DELEGATE MUDD: Yes.

4 DELEGATE RYBCZYNSKI: It occurs to me in some  
5 of this material there was some qualification put on that.  
6 Is the Missouri Plan used in the entire state of  
7 Missouri?

8 DELEGATE MUDD: No, only with respect to some  
9 courts. It has been expanded over the years. It began,  
10 I think, with the Court of Appeals and has now been  
11 extended to courts in St. Louis and Kansas City possibly,  
12 but it is being expanded as the legislature there  
13 implements it.

14 THE CHAIRMAN: Delegate Rybczynski.

15 DELEGATE RYBCZYNSKI: So that the experience  
16 in Missouri is not statewide after 25 years of use.  
17 Okay, sir. I do want to ask you this.

18 On this question of term of office, we talked  
19 about wanting judges who would feel secure and wouldn't  
20 have to stand for re-election against live opposition  
21 and all this. Doesn't this sort of knock your own theory



1 in the head about this in reducing the term from 15 years  
2 to 10 years?

3 DELEGATE MUDD: Not in the judgment of the  
4 committee in view of the information available to us  
5 15-year term in Maryland is one of the longest terms  
6 allowed for judges in any state and that with the non-  
7 competitive election and our recommendation with respect  
8 to removal and retirement, all that was more consistent  
9 with the 10-year term and running against the record of  
10 10 years.

11 THE CHAIRMAN: Delegate Rybczynski.

12 DELEGATE RYBCZYNSKI: Mr. Chairman, with  
13 reference to the lay members of the nominating committee,  
14 I can greatly appreciate the facility with which lay  
15 members would know the various members of the Bar  
16 Association and in your county, for instance, <sup>or</sup> Mr. Grant's  
17 county. But how could a lay member possibly know the  
18 2,500 different lawyers of Baltimore City and their  
19 qualifications for the office?

20 DELEGATE MUDD: The answer is that I doubt if  
21 there is any lay person in Baltimore City who would know



1 intimately all 2,500 lawyers of that city, if you have  
2 that many. But I would assume there are laymen in that  
3 city who are knowledgeable in the business affairs of the  
4 city and by hearsay at least would have a rather generous  
5 knowledge of a great number of lawyers.

6 THE CHAIRMAN: Are there any further questions?  
7 Delegate Weidemeyer.

8 DELEGATE WEIDEMEYER: Mr. Chairman, did the  
9 committee give consideration to the fact that both the  
10 Chairman and I have enjoyed many happy and successful  
11 years of practice under the present system of judicial  
12 appointments?

13 DELEGATE MUDD: Did I give consideration to  
14 that?

15 DELEGATE WEIDEMEYER: Did the committee give  
16 consideration to the fact that both you and I have  
17 enjoyed many happy and successful years of practice under  
18 the present system of judicial appointments and elections.

19 DELEGATE MUDD: I forgot to remind them you  
20 did but it was obvious from my position as Chairman I was  
21 not enjoying it so they could not reach that conclusion.





1 THE CHAIRMAN: Any further questions, Delegate  
2 Grant?

3 DELEGATE GRANT: Delegate Mudd, you were  
4 asked a question regarding the power of the judiciary  
5 over the Governor. Was it not true in the transition  
6 period 1864 to 1867 Constitution there was a case arose  
7 relative to appointment of a judge in which Governor  
8 Swan refused to appoint a judge and the court did issue a  
9 mandamus and directed him to do so and said the rule of  
10 Marbury versus Mass was not applicable to Maryland on  
11 the Governor.

12 DELEGATE MUDD: You are thoughtful and kind.  
13 I received your note. You are entirely correct.

14 THE CHAIRMAN: Further questions? If not  
15 the Chair calls on Delegate Johnson, spokesman for the  
16 minority, to present the minority report with respect  
17 to this portion of the committee recommendation.  
18 Delegate Johnson, please come forward to the reading  
19 desk.

20 DELEGATE JOHNSON: Mr. Chairman, fellow  
21 delegates, I might be somewhat more detailed in my



1 presentation hopefully to clear up questions in advance.

2 Let me say at the outset that all note matters  
3 under consideration pertaining to the Judicial Article  
4 must be divided to insure some semblance of order and  
5 understanding, the members of the Judicial Branch Committee  
6 majority and minority alike have a responsibility to  
7 remind the Committee of the Whole and consider each and  
8 every section as an indivisible part of the entire  
9 article and emphasize those areas where a break with  
10 a proven and workable system occurs. I say this partly  
11 because I feel the action of the Committee of the Whole  
12 yesterday concerning the creation and appointment of  
13 commissioners by the judiciary was arrived at mainly out  
14 of the fear that we would perhaps be retaining the  
15 committing magistrate system that now very unfortunately  
16 flourishes throughout Maryland.

17 When the minorities strongly and repeatedly  
18 supported the Judicial Branch Committee on a unified  
19 court system, it willfully, knowingly, and happily wiped  
20 out the magistrate system and the committing magistrate  
21 system as it exists in Maryland today.



1           A new creature was thereby born in Maryland  
2       as a result of the Judicial Committee's action and  
3       we named him commissioner. In the opinion of the minority  
4       any resemblance to the commissioners in the committing  
5       magistrate was purely coincidental. Minority committee  
6       wanted to allow reapportioned legislature an opportunity  
7       to meet the new responsibilities partially because of  
8       the pleas of the Legislative Branch Committee to  
9       strengthen this important branch of government and  
10      because we felt the legislature would not only rise to the  
11      occasion but would relieve the court of this awesome  
12      judicial responsibility.

13           I can appreciate the fears of the Committee of  
14      the Whole although personally we see no connection  
15      between justice of the peace and the commissioners. I  
16      can live with this action although as a practicing  
17      attorney, I will cringe every time our judicial system  
18      is given a black eye because of some charge, however  
19      unfounded, of politics and patronage.

20           Perhaps it will all work out and the system  
21      will work well. I sincerely hope it will. Undoubtedly





1 in the minds of some delegates late this Friday evening  
2 is the thought that that was yesterday and why bring  
3 it up today? Several reasons why really.

4 First because I deem it important to set the  
5 record straight. Second, our actions of today on the  
6 district court set-up may require us to reconsider our  
7 actions on the commissioners. Third, this power as it  
8 now stands, that is, this appointment power, as it now  
9 stands, must be considered in the light of what checks  
10 and balances we are going to retain in the people on  
11 judicial discretion. Fourth, if we can ponder the  
12 constitutional history of Maryland over the last hundred  
13 years, certainly we can consider our actions of less than  
14 24 hours ago, particularly when we are still at sea.

15 So with nothing more than a backward glance  
16 and the satisfaction, slight as it may be, that I said some-  
17 thing for me at least that had to be said, I now  
18 embark with you on our journey to Missouri by way of the  
19 River Niles. On the matter of selection and tenure, the  
20 first question the Convention must decide is are we going  
21 to change our method of selecting and electing judges?



1 My first inclination as a traditionalist and admirer of  
2 the present Maryland Judiciary and a nongambler, if you  
3 will, when the stakes are high, is to say emphatically  
4 no.

5 Isn't it answer enough to the majority's  
6 proposal calling for nominating commissions and non-  
7 competitive elections to point out that Maryland has  
8 had and still has one of the most outstanding judiciaries  
9 in the country? That over 100 years ago Maryland departed  
10 from a system where judges were appointed and served  
11 during good behavior because of the hue and cry from  
12 citizens who rightfully wanted some say in the judiciary  
13 branch of government, that there has been no creditable  
14 evidence offered that the judiciary in Maryland will be  
15 better under this system. That by installing a 15-year  
16 term, which is the second largest term in the country,  
17 that Maryland in fact removed judges from politics many,  
18 many, many years ago. That it would be an erosion of  
19 democratic principles in our republican form of government  
20 to refuse the citizens some say on matters of selecting  
21 their judges. That under the proposed selection and



1 election system not one popularly elected representative  
2 of the citizens of Maryland has more than a token  
3 voice in the final outcome of judicial selection and that  
4 voice, that lone voice, will be but a whisper from our  
5 Governor, the Chief Executive of this great State,  
6 who will be assigned the embarrassing task of picking  
7 from as little as two nominees from a nominating  
8 commission and is then told if that isn't enough, that if  
9 he doesn't pick from this list, the chief judge who has  
10 a representative on the commission will do so anyway.

11 If the foregoing is not reason enough for  
12 Maryland to abandon its great heritage and envied  
13 tradition in a democracy second to none consider with me  
14 the following.

15 Under the proposal of the majority there is no  
16 manner in which members of the nominating commission  
17 can be held accountable to anyone. There are no guide  
18 lines for the qualifications of the members of this  
19 commission. So we have no guarantee whatsoever that they  
20 will have the necessary expertise to make what amounts to  
21 final selections of our judiciary.





1                   Since the majority position presumes that  
2                   the Governor may pick only his man to fill the job and  
3                   not the best man available, that is, if we do not adopt  
4                   their system -- and we disagree with this -- that this will  
5                   occur, since they presume this is the case, then could he  
6                   not capture members of the nominating commission and the  
7                   public know nothing of it?

8                   No matter how you look at it, wouldn't we be  
9                   taking away the voice of the citizens of Maryland to  
10                  select their own judges, regardless of how well-meaning  
11                  our actions may be?

12                  Lest I be accused of suggesting that this is a  
13                  concept that is a new concept, let me be one of the first  
14                  to say that variations of this plan have been around over  
15                  30 years. I might add, with notable lack of general adop-  
16                  tion by other States. While I am making some admissions,  
17                  let me also say that some of the finest legal minds in the  
18                  country, as well as in our State, urge adoption of this  
19                  plan, but I submit that the record will show, if it hasn't  
20                  already shown, that as many oppose it, more, I submit, that  
21                  propose it.



1           May I also make clear that in my opinion every-  
2           one who urges adoption of this plan except those, if any,  
3           currently contemplating judicial appointment, do so with  
4           deep conviction and with a sincere effort to improve the  
5           judiciary in Maryland. I fully anticipate that more than  
6           a handful of outstanding delegates of this Convention,  
7           friends all, I trust, will urge adoption of this plan,  
8           because in its simplest terms what we are talking about is  
9           a philosophy of government; I respect the views of others  
10          proposing this plan, and I believe that most respect the  
11          views of the signatories to this minority report.

12                 I trust you know something about the Missouri  
13          plan, but did you know that although it has applied to the  
14          appellate court in Missouri and the trial courts in St.  
15          Louis and Kansas City since 1940, it has not been extended  
16          to any other county in that State? Did you know that no  
17          other State in the entire country has the plan that is  
18          proposed in the majority report on a statewide basis at  
19          all levels of the judicial system, as proposed by the  
20          majority?

21                 Are you aware that some of the questions



1 expressed in the minority report of this committee with  
2 respect to the adoption of this plan were shared by Judge  
3 Menchine and other judges of the Baltimore County bench,  
4 by Judge O'Donnell and Judge Prendergast of the Baltimore  
5 City bench, by Judge Wilson K. Barnes of the Court of  
6 Appeals of Maryland, by former Governor Tawes and by Governor  
7 Agnew, the Chief Executive of our State, among many, many  
8 others?

9 During the debate on matters pertaining to  
10 selection and tenure you will hear from the proponents of  
11 this proposal that it is being accepted far and wide, and  
12 that every State is either adopting it or will soon do so.  
13 That argument, if there is one, can be answered by notable  
14 failure to be adopted in any significant form in any State  
15 that recently attempted to write a constitution, and its  
16 notable absence from the vast majority of the other States.

17 You will hear how this nominating and non-  
18 competitive election procedure has been hailed and publi-  
19 cized far and wide. It has appeared in Bar Association  
20 Journals, as distributed to your desks, and in the Ameri-  
21 can Judicature Magazine, and many many periodicals and





1 pamphlets flowing from Missouri. I agree with their posi-  
2 tion concerning its endorsement. You may hear that every-  
3 one loves it in Missouri. That is, loves this plan. Yet  
4 the American Judicature Society article contains reference  
5 to the fact a majority of lawyers polled in Missouri,  
6 while approving some of the features of the plan indicated  
7 they felt it does not take politics out of the selection  
8 process.

9           You will hear -- excuse me, you will be told,  
10 I believe, that Maryland is not getting the best of the  
11 best for its judiciary because some members of the bar will  
12 not accept the position because of the fact that they have  
13 to face the citizens in election one time every 17 years.  
14 In a defense of all the outstanding Maryland jurists who have  
15 taken this so-called risk, I repeat that no evidence support-  
16 ing this contention was aired before our committee or any-  
17 where else, I submit.

18           As a personal note, may I say that I am not at  
19 all certain that I want a man to serve as a judge who is  
20 unwilling to put his qualifications before the electorate  
21 at least one time in 16 or 17 years.



1 reform is really not needed in the selection and tenure  
2 of Maryland judges in the opinion of the minority, because  
3 something has to be pretty bad before it can be reformed.  
4 However, in the spirit of good faith and acknowledgement  
5 of the sincerity of many proponents of this measure we  
6 endorse it on an appellate court level with a slight revision.  
7 We strongly urge removal of a judge on its nominating  
8 commission at that level.

9 What does the minority report propose to do?

10 It provides, I submit, substantially the Niles plan as it  
11 was presented in its original form some years ago and in  
12 many respects it surpasses it. In detail it provides  
13 that the judges on the two highest courts will be appointed  
14 from a nominating commission, and a single nominating com-  
15 mission, if you will, where the best lawyers and the best  
16 citizens would be gathered together for deliberation.

17 We also provide that these appellate court  
18 judges of the entire State should run in a non-competitive  
19 election on a Statewide basis. For reasons stated in the  
20 minority report, we find the appellate courts divisible from  
21 the trial courts, and we can recommend without hesitation



1 that a different method be used for selection and retention  
2 of these jurists who perform a valuable but far different  
3 judicial function than the judges on the trial court level.

4 On the trial court level, that is, the superior  
5 court and the district court in this unified judicial  
6 system, we propose retention of appointment by the Governor,  
7 who will be solely responsible for his selection, and we  
8 repeat that this is very important, that he will be solely  
9 responsible for his selection and subjects so that the  
10 nominee will stand in an open election at least after ser-  
11 ving two years.

12 The election we would suggest should be non-  
13 partisan in nature, and the appointed judge could be desig-  
14 nated in our opinion as "incumbent" on the voting machines,  
15 while running for a term of 14 years on the superior court  
16 level, and 10 years on the district court level.

17 If you would be kind enough to turn to the  
18 majority recommendation with respect to these sections  
19 very briefly I will itemize the amendment we will propose  
20 with respect to the majority report on the sections. It  
21 is on page 4, under "Selection and Tenure," of the majority







1 report committee recommendation.

2 We have a very brief suggestion under 5.13.

3 We are going to amend 5.13 to provide that judges in Mary-  
4 land be at least 30 years of age. This has been the  
5 situation in Maryland for a long time. We advocate the re-  
6 tention of that, that 30 would be a minimum age for a lawyer  
7 to serve as judge in this great State.

8 Under section 5.14 we will come to what will  
9 probably be the real test or real fight, if there is one,  
10 concerning the nomination and appointment system.

11 Section 5.14 in the majority report proposes to set up  
12 a section that will take care of nomination and appointment  
13 by way of a commission on all levels of the judiciary.

14 Because this section is so broad it covers all  
15 the levels of the State judicial system. We therefore ask  
16 by way of an amendment for a necessary revision in the title  
17 and in some of the verbiage so that it would reflect an  
18 appellate court nominating commission. We would also de-  
19 lete -- I wouldn't go into any detail now; I believe some  
20 of this was commented upon in questioning to Chairman Mudd --  
21 we would delete the last portion of that section beginning



1 on line 45, "If the Governor fails..."

2 We would delete that section. In the opinion  
3 of the minority it is absolutely silly to presume that the  
4 Governor will not do that which the Constitution tells  
5 him to do. We are appalled at the prospect that he may  
6 avoid doing this if he so chooses, or that a chief judge  
7 who has a colleague on the nominating commission, if that  
8 were in fact adopted, could turn around and adopt another  
9 colleague to serve with him.

10 Under section 5.15 it deals under the majority  
11 report, on page 5, with the Appellate Court Nominating  
12 Commission. Our only amendment to that section would be to  
13 remove the judge from the nominating commission. The reasons  
14 were explained in our minority report, together with my  
15 initial presentation yesterday.

16 I might add if I might repeat myself, by saying  
17 if you in fact want to have an independent nominating com-  
18 mission, then a judge of the court, or in the judicial  
19 system should not be a member of that nominating commission.

20 If our position is adopted by the Committee of  
21 the Whole, we can delete section 5.16 since it pertains to



1 trial courts nominating commissions, not contemplated under  
2 the minority report.

3 Section 5.17 can easily be amended and shortened  
4 to be retitled Appellate Lawyers Nominating Commission, and  
5 we would urge after the word "State" on line 34, that all  
6 the rest be deleted, inasmuch as we would only be talking  
7 about one appellate court nominating commission.

8 The same would hold true generally speaking  
9 with respect to section 5.18, where we propose there be an  
10 appellate laymen nominating commission; and on line  
11 47, after the word "state", delete the rest.

12 On page 6 under section 5.19, if what we  
13 propose is adopted, we can remove section 5.19 since in  
14 fact there will not be a judicial member of the nominating  
15 commission, and we cannot urge this too strongly.

16 Under 5.20 it would be nothing more than a  
17 simple housekeeping amendment. We would suggest that the  
18 term "non-judicial" as used on line 16 and on line 19  
19 be deleted, because it would not be necessary.

20 Under section 5.21 that can be approved one of  
21 two ways: We could either retitle it "Terms of Office







1 of Appellate Court Judges" and keep the language intact  
2 up to the last, up to the sentence that ends with the word  
3 "State" on page 38 so that judges on the appellate court  
4 could in fact run against their record every ten years.

5 The rest of the language in that section, if  
6 our proposals are adopted, in our opinion would be un-  
7 necessary.

8 That is essentially our position with respect  
9 to selection and tenure of judges, Mr. Chairman.

10 THE CHAIRMAN: Are there any questions of the  
11 minority spokesman?

12 Delegate Macdonald.

13 DELEGATE MACDONALD: Mr. Johnson, under your  
14 proposal, what would be the term of the judges of the  
15 superior court?

16 DELEGATE JOHNSON: Fourteen years.

17 DELEGATE MACDONALD: What would be the term  
18 of the judges of the two appellate courts?

19 DELEGATE JOHNSON: They would be ten years, but  
20 running against their record. We see an obvious division  
21 in a judge who would run in an open election and a judge who



1 would run against his record. We frankly felt that inas-  
2 much as the Commission recommended a ten-year non-competi-  
3 tive election, if in fact we were going to carry through  
4 a non-competitive election every ten years, we saw no rea-  
5 son to argue with that term as proposed by the Commission  
6 and the majority of this committee.

7 THE CHAIRMAN: Delegate Macdonald.

8 DELEGATE MACDONALD: Is it true that the pattern  
9 in other States is that the higher the court, the longer  
10 the term?

11 DELEGATE JOHNSON: I am not certain about that,  
12 but I believe there are some statistics that indicate  
13 that is a trend of a type; but please bear in mind, Mary-  
14 land is so unique with its 15 year term. We might be  
15 talking about other States where they have a four or six  
16 year term on trial court level, and maybe ten, twelve or  
17 up to fifteen on the appellate court level, but very, very  
18 few States go over ten years for the term of any judge on  
19 any court, I might add.

20 THE CHAIRMAN: Delegate Macdonald.

21 DELEGATE MACDONALD: Why do you break at 14?



1           DELEGATE JOHNSON: We recommend 14 because  
2 it is in line with our present system of 15, and in order  
3 to keep the date consistent with the biennial election,  
4 at the 15 year term when a judge's term runs out he has  
5 to be reappointed for a period of time until the next  
6 election. The only reason we suggest 14 is because we  
7 thought it made better sense. A judge could run and 14  
8 years later, when the term was up, there would be another  
9 election.

10           THE CHAIRMAN: Delegate Macdonald.

11           DELEGATE MACDONALD: If you approve of the Niles  
12 Plan for the two highest courts, why do you not  
13 approve of it for the superior court and the district  
14 court?

15           DELEGATE JOHNSON: I thought I commented on it.  
16 Let me answer this way: The minority doesn't particularly  
17 favor the Missouri plan at any level. However, we recognize  
18 the fact that there is some evidence that indicates that this  
19 is a viable and proper procedure. Because of the clear  
20 division that we find and see with respect to appellate  
21 court judges and trial court judges, and the fact that





1 appellate court judges are for all practical purposes  
2 insulated from the people and try issues and cases, rather  
3 than individuals and hear witnesses, we thought if we are  
4 going to try a system of this nature in the State of  
5 Maryland, this certainly would be the area to try it,  
6 on the appellate court level.

7 For that reason we endorsed it on the appellate  
8 court level, only.

9 THE CHAIRMAN: Delegate Macdonald.

10 DELEGATE MACDONALD: Do you think it is wise  
11 to experiment with the courts at the two highest levels?

12 DELEGATE JOHNSON: We don't view it as an  
13 experimentation, really. To the best of my knowledge  
14 there has been very little, if any election activity  
15 with respect to judges running on the appellate court level,  
16 anyway. Certainly in recent years they have not been  
17 challenged in elections.

18 Inasmuch as their opinions are reported in the  
19 press and the electorate have an opportunity to know where  
20 they take their positions, we feel if you are going to have  
21 non-competitive elections that would be a proper place



1 to have them, on the appellate court level.

2 I don't view it as "a strict experimentation"  
3 unless, of course, you would like to view the entire ma-  
4 jority proposal as an experimentation. I don't think that  
5 is your point.

6 THE CHAIRMAN: Delegate Macdonald.

7 DELEGATE MACDONALD: That is not my point.

8 I have no further questions.

9 THE CHAIRMAN: Any further questions of the  
10 minority spokesman?

11 Delegate Dukes.

12 DELEGATE DUKES: Delegate Johnson, do you have  
13 any information on how many presiding circuit court judges  
14 in the State of Maryland received their position by being  
15 elected, as opposed to being appointed?

16 THE CHAIRMAN: You mean when they first ascended  
17 the bench?

18 DELEGATE DUKES: First took the bench. How  
19 many were actually elected instead of being appointed by  
20 the Governor?

21 DELEGATE JOHNSON: It is my understanding in



1 the recent history of Maryland, going back 50 or 60  
2 years -- someone can correct me if I am wrong -- I think  
3 only four judges have ascended to the bench by way of  
4 election opposing an originally appointed judge and were  
5 elected.

6 DELEGATE DUKES: Over what period of time  
7 did that cover?

8 DELEGATE JOHNSON: I think 50 or 60 years.  
9 It might be beyond that.

10 DELEGATE DUKES: Thank you.

11 THE CHAIRMAN: Any further questions of the  
12 minority spokesman?

13 Delegate Byrnes.

14 DELEGATE BYRNES: Delegate Johnson, do I under-  
15 stand you retain the lawyer poll for the appellate level  
16 and do not retain it for the lower level?

17 DELEGATE JOHNSON: Let me state that in the  
18 minority's view there wasn't a clear distinction as to whether  
19 or not the minority would recommend a lawyer poll to this  
20 committee. We thought the question under section 5.21  
21 would be easily divisible. In other words, what we would





1 propose by way of amendment is that section 5.21 be  
2 titled "Term of Office of Appellate Court Judge," and then  
3 up through, our amendment would go up through "State."

4 We would also introduce an amendment with re-  
5 spect to the lawyer poll only to keep it consistent with  
6 the majority draft, but I can say personally that I don't  
7 see where it is necessary on the appellate court level.

8 THE CHAIRMAN: Delegate Byrnes.

9 DELEGATE BYRNES: I am afraid I don't under-  
10 stand. I am correct in assuming you will not retain  
11 suggested retention at the trial court level?

12 THE CHAIRMAN: Delegate Johnson.

13 DELEGATE JOHNSON: Under our view, if judges  
14 run -- I didn't understand your question, perhaps.  
15 That is my fault, I am sure.

16 On the trial court level the judge runs in  
17 open election, and I see no necessity for having lawyer  
18 polls. Is that correct?

19 THE CHAIRMAN: Delegate Byrnes.

20 DELEGATE BYRNES: Would you see any benefit at  
21 all to the public in providing this poll for all four levels,



1 even if it is competitive election?

2 DELEGATE JOHNSON: That is an excellent question  
3 and gave the committee some concern. What we had to weigh,  
4 Delegate Byrnes, is the real possibility of a judge receiv-  
5 ing a substantial number of votes in the poll, perhaps 60  
6 or 70 percent, but yet recognizing that really wouldn't  
7 be much of an endorsement, either.

8 What do you do with the judge who receives 51  
9 percent?

10 We were very concerned about that, particularly  
11 when there will be judges who will be running in the same  
12 election.

13 In our opinion it is a necessary evil in non-  
14 competitive elections on the trial court level, but with  
15 an open election it just simply isn't worth the risk in  
16 our opinion.

17 THE CHAIRMAN: Delegate Byrnes.

18 DELEGATE BYRNES: Would you suggest there is a  
19 risk to the public in a competitive open election that an  
20 emotional, highly financed campaign would put someone in  
21 office in a very sensitive position? Did you consider that



1 risk?

2 DELEGATE JOHNSON: We considered the possibility  
3 that the electorate could elect whomever they pleased, but  
4 in our view if this is in fact a government of the people  
5 and by the people, and if the government is for all practical  
6 purposes "to the people," and if they in fact provide  
7 the office of judge through their taxes, they should have  
8 a right and a say to determine who in their opinion should  
9 fill that position.

10 If there is a risk involved, as you indicated,  
11 we are willing to take it.

12 THE CHAIRMAN: Delegate Rybczynski.

13 DELEGATE RYBCZYNSKI: Delegate Johnson, I would  
14 like to ask you the same question I asked your Committee  
15 Chairman.

16 What was the discussion in our committee as  
17 to how a lay member of this nominating committee would know  
18 the qualifications of the various attorneys in a large  
19 metropolitan county or a large city?

20 DELEGATE JOHNSON: I am at a distinct dis-  
21 advantage because I don't believe I was present when





1 Chairman Mudd answered the question. But let me say  
2 that in my own opinion most of the witnesses and even in  
3 our discussion we indicated in all probability the lay  
4 members of the nominating commission really wouldn't know  
5 too much about the general or the majority of the lawyers  
6 in the area. This is one of the reasons, at least in the  
7 minority view, why we did not think a nominating commission  
8 is effective.

9 THE CHAIRMAN: Any further questions?

10 Delegate Schneider.

11 DELEGATE SCHNEIDER: Delegate Johnson, in  
12 the telephone conversation we had with Judge Holt and  
13 several members of the Missouri Bar Nominating Commission,  
14 what was the position held by -- I mean the job held by  
15 the layman member of the Commission that we talked with?  
16 Do you remember?

17 DELEGATE JOHNSON: I do not.

18 DELEGATE SCHNEIDER: It was something like  
19 a corporation head or president of a company?

20 DELEGATE JOHNSON: I do not know. If you have  
21 that information, I wouldn't mind a bit if you told us.



1                   DELEGATE SCHNEIDER: It is probably on my desk  
2 and it would take me 20 minutes to find it. I know  
3 it is something on that level. Do you envision the  
4 governor would put sheepish laymen on this commission  
5 that would be easily led by lawyers, or he would put men  
6 of stature that would not be easily persuaded without  
7 good reason.

8                   THE CHAIRMAN: Delegate Johnson.

9                   DELEGATE JOHNSON: I have no idea what a governor  
10 might do.

11                  THE CHAIRMAN: Delegate Schneider.

12                  DELEGATE SCHNEIDER: Do you feel, do you  
13 envision this nominating commission would blindly  
14 make its nomination, or would you envision perhaps they  
15 would look at the resumes and also interview and  
16 test public sentiment by perhaps hearings and other methods  
17 of this sort?

18                  THE CHAIRMAN: Delegate Johnson.

19                  DELEGATE JOHNSON: I think a lot will do either.  
20 That is what concerns me.

21                  THE CHAIRMAN: Delegate L. Taylor..



1 DELEGATE L. TAYLOR: Delegate Johnson, do  
2 you feel that a voter is more qualified to make a selection  
3 of the qualifications of a judge, or would a layman be more  
4 qualified?

5 DELEGATE JOHNSON: Would you repeat that?

6 THE CHAIRMAN: Delegate Taylor.

7 DELEGATE L. TAYLOR: Would a voter be more  
8 qualified to ascertain the qualifications of a judge, say  
9 compared to a law member of a nominating commission?  
10 Which one would be more qualified, in your opinion?

11 THE CHAIRMAN: Delegate Johnson.

12 DELEGATE JOHNSON: If I may answer the question  
13 in this way, it is the opinion of the minority that the  
14 electorate, it is the right of the citizens of Maryland,  
15 all the citizens of Maryland, to have some say in who their  
16 judges will be. To that extent they are qualified.

17 THE CHAIRMAN: Delegate Taylor.

18 DELEGATE L. TAYLOR: Do you feel that a lay  
19 member would have more time to reflect and to think and to  
20 really determine the qualifications of a candidate for the  
21 judgeship?





1 THE CHAIRMAN: Delegate Johnson.

2 DELEGATE JOHNSON: Certainly a lay member  
3 of a nominating commission would have ample time to do all  
4 of that, and all that Delegate Schneider suggested. The  
5 question is, would he? I don't know.

6 THE CHAIRMAN: Delegate Taylor, any further  
7 questions?

8 DELEGATE L. TAYLOR: In your studies of the  
9 system in the State of Maryland, have you made any  
10 type of consideration of the political effect in electing  
11 judges, for instance, in, say, the City of Baltimore?  
12 Do you feel you get real qualified judges in the election of  
13 judges in the City of Baltimore?

14 DELEGATE JOHNSON: Yes, I think we have an  
15 outstanding bench in Baltimore City. I can only think of  
16 two occasions in the last 35 or 40 years, one on the  
17 supreme bench level, one on the municipal court level,  
18 where a judge was elected to the bench rather than having  
19 first been appointed.

20 THE CHAIRMAN: Delegate Taylor, further  
21 questions?



1 DELEGATE L. TAYLOR: If you were being considered  
2 as a candidate for a judgeship, would you prefer to run,  
3 or would you like to be put on the list? Would you prefer  
4 to run?

5 THE CHAIRMAN: Delegate Johnson.

6 DELEGATE JOHNSON: If I were a judge or if I  
7 were a candidate for judge there is absolutely no question  
8 in my mind that I would prefer to be appointed from a  
9 nominating Commission and I would prefer to run in a non-  
10 competitive election. But that is why I oppose it, because  
11 that is exactly what I would prefer to do.

12 THE CHAIRMAN: Delegate Taylor, do you have any  
13 further questions?

14 DELEGATE L. TAYLOR: No, sir.

15 THE CHAIRMAN: Any further questions from any-  
16 one else?

17 Delegate Byrnes.

18 DELEGATE BYRNES: Delegate Johnson, referring  
19 to the municipal court election you spoke of, what is  
20 the generally considered reason or accepted reason for the  
21 fact that the judge who is an incumbent lost that election?



1 DELEGATE JOHNSON: I am very sorry, Delegate  
2 Byrnes. Would you repeat the question?

3 DELEGATE BYRNES: Referring to that municipal  
4 court election, you commented on what is the generally  
5 considered, accepted reason for the loss sustained by  
6 the incumbent judge.

7 Would I be correct in suggesting because his  
8 name began with a "W"?

9 THE CHAIRMAN: Delegate Johnson.

10 DELEGATE JOHNSON: I have heard that comment.  
11 I think that it is supportable. I might also add in that  
12 particular election there were something like five or six  
13 or perhaps more incumbents running, a very unusual municipal  
14 court election, and the fact that the judge who lost, who  
15 of course was subsequently reappointed to the bench, that  
16 was the reason given, the fact that because there were so  
17 many candidates, which is very unlikely to occur again,  
18 because his name was so far down the ballot.

19 I might also add the same candidate, after he  
20 was appointed the second time, he didn't change his name,  
21 he ran and led the ticket.





1 THE CHAIRMAN: Delegate Byrnes.

2 DELEGATE BYRNES: May I ask this final  
3 question? If you did not suggest to the Committee of the  
4 Whole we retain the nominating commission system for the  
5 trial court level while you also reject the lawyer poll,  
6 would you suggest to us how the people can make the judg-  
7 ments we think are necessary for selecting judges?

8 THE CHAIRMAN: Delegate Johnson.

9 DELEGATE JOHNSON: I think the people will make  
10 the judgment with respect to their judges the exact same  
11 way they do when they elect their legislature, their  
12 congressmen, their senators, their governors, and the Presi-  
13 dent of the United States. Those who want to take the  
14 time to study the qualifications and study the endorsements  
15 of the various candidates, want to find out which one is the  
16 better man, they will make an intelligent decision. Those  
17 who choose not to look into the matter will make a less  
18 intelligent decision; but I maintain that is their right,  
19 to make either an intelligent decision or a non-intelligent  
20 decision.

21 THE CHAIRMAN: Are there any further questions?



1 Delegate Bradshaw has a question.

2 DELEGATE BRADSHAW: Mr. Chairman, I would  
3 like to ask Delegate Johnson a question.

4 So that I may have a clear understanding of  
5 what you are proposing, can I ask you this question?

6 Is it the position of the minority that the  
7 selection of judges at the trial court level, that is, at  
8 the proposed superior court level, should be as at present?

9 THE CHAIRMAN: Delegate Johnson.

10 DELEGATE JOHNSON: Essentially, yes.

11 DELEGATE BRADSHAW: Let me ask you this: ,

12 Does not the present system tend to favor the  
13 existing political establishment?

14 THE CHAIRMAN: Delegate Johnson.

15 DELEGATE JOHNSON: In my opinion, no.  
16  
17  
18  
19  
20  
21



1                   DELEGATE BRADSHAW: What provision has the  
2 minority taken to improve the situation of the minority?  
3 I particularly make reference to the Baltimore City  
4 situation.

5                   DELEGATE JOHNSON: We think our proposal best  
6 protects the minorities, any minority, by precluding  
7 nominating commissions. In our view a small nominating  
8 commission can either be weighted for or weighted against  
9 minorities. I am appalled at the idea that nominating  
10 commissions may either be stacked because of pressures  
11 by minorities either for or against minorities. I prefer  
12 to see it open, I prefer to see the Governor  
13 take into consideration every possible nominee and pick the  
14 best man for the position. We think our position pro-  
15 tects all minorities as well as all the citizens in the  
16 state.

17                  THE CHAIRMAN: Any further questions? If not,  
18 I request Delegate Johnson to return to his seat.  
19 The Clerk will sound the quorum bell, please.

20                  DELEGATE SHERBOW.

21                  DELEGATE SHERBOW: May I suggest to the





1 Chairman that at ten minutes after five on Friday afternoon of  
2 a very, very long week that perhaps we would be better  
3 able and be more refreshed on Monday to take up the rather  
4 grave and important matter rather than make the motion that  
5 we rise. Perhaps if we follow the usual protocol, we  
6 would be accomplishing a great deal more than if we were to  
7 sit for the next 50 minutes.

8 THE CHAIRMAN: The Chair would like to talk to  
9 Delegate Powers at the rostrum, please.

10 The Chair in a few minutes will recognize Delegate  
11 Powers for the purpose of moving that the committee rise.  
12 Let me say to you, however, that we have a great many  
13 amendments to consider in connection with this article.  
14 It is, as has been pointed out, a very important article.  
15 It has been presented to you at great length in very able  
16 committee reports and in very able and detailed thorough  
17 reports by minority spokesmen. There have been numerous  
18 questions. The majority recommendation is supported  
19 by a very detailed and factual memorandum and each minority  
20 report is similarly supported by such a memorandum.

21 The Chair agrees with the suggestion of



1 Delegate Sherbow that we can make greater progress by  
2 adjourning now and considering this subject afresh on  
3 Monday afternoon provided that each delegate in the  
4 meantime over the weekend will undertake to review the  
5 memoranda to be sure that he has prepared in advance any  
6 amendment he desires to offer.

7 If the Chair may be permitted to say so, provided  
8 that in the course of debate we avoid needless repetition,  
9 there will be no desire to limit the number of speakers.  
10 The Committee on Calendar and Agenda notwithstanding, the  
11 report of the Committee on Rules will not impose  
12 restrictions on the number of speeches to be made by  
13 each delegate, unless the conduct of the debate on Monday  
14 makes this necessary.

15 May I therefore urge each delegate to think  
16 ahead as to what he may want to say and so organize his  
17 thoughts so that he can say what he needs to say in one  
18 speech on each point and say it very briefly.

19 But above all, have your amendments prepared  
20 in advance.

21 The Chair says that notwithstanding the fact



1 that I also am going to request the delegates to spend  
2 a good bit of time this weekend in reading the very  
3 extensive committee recommendations and minority reports  
4 which have been filed in the past few days, and which  
5 are going to be filed this afternoon, we gave consideration  
6 to the possibility of suggesting to the Convention that  
7 it meet tomorrow, notwithstanding the previous understanding  
8 that we would not meet on Saturday. We decided not to do  
9 so because of the tremendous dulk of material that is  
10 to be read by each delegate.

11 We still have before us the task of completing our  
12 work by December 12th. It can be done if we will all continue  
13 to work as we have been working these past few weeks and  
14 to limit debate to pertinent debate, full debate, but  
15 not unnecessarily repetitive debate.

16 The Chair recognizes Delegate Powers.

17 DELEGATE POWERS: Mr. Chairman, I move the  
18 Committee of the Whole rise and report.

19 (Whereupon, the motion was seconded.)

20 THE CHAIRMAN: All in favor signify by saying Aye;  
21 opposed, no. The ayes have it. It is so ordered.







1 (The mace was replaced by the Sergeant at Arms.)

2 (Whereupon, at 5:15 p.m., the Committee of the  
3 Whole rose, and the Convention reconvened.)

4 THE PRESIDENT: The Convention will please  
5 come to order.

6 For what purpose does Delegate Willoner rise?

7 DELEGATE WILLONER: Personal privilege. I would  
8 like the Convention to welcome my wife Pat, my son, Terry  
9 and daughter Cindy. They are why I am here.

10 THE PRESIDENT: On behalf of the Committee of  
11 the Whole the Chair reports the Committee has had under  
12 consideration Committee Recommendation JB-1, that it still  
13 has the matter under consideration and desires leave to sit  
14 again.

15 There are committee reports to be read across  
16 the desk. Committee Recommendation LB-2. The Clerk  
17 will read the recommendation.

18 MR. QUILLEN: Committee Recommendation No. LB-2  
19 by Committee on the Legislative Branch, Francis X.  
20 Gallagher, Chairman.

21 A RECOMMENDATION that portions of Article III



1 of the new Constitution dealing with the Legislative  
2 Branch provide for substantially equal legislative districts,  
3 create an independent commission to recommend redistrict-  
4 ing plans to the General Assembly, provide for the  
5 filling of vacancies in the General Assembly, and establish  
6 legislative procedure, to read as follows:

7 THE PRESIDENT: The report will be -- the recom-  
8 mendation will be referred to the Committee of the Whole.  
9 Accompanying the recommendation is Committee Memorandum  
10 LB-2, Committee Recommendation R&B-2. The Clerk will  
11 read the Recommendation.

12 MR. QUILLEN: Committee Recommendation No. R&P-2  
13 by the Committee on Personal Rights and the Preamble,  
14 Richard W. Kiefer, Chairman.

15 A RECOMMENDATION that the Constitution contain  
16 provisions relating to articles of government, the  
17 administration of justice and the legal policies and  
18 limitations of the state, as follows:

19 THE CHAIRMAN: The Recommendation is referred  
20 to the Committee of the Whole. Accompanying the  
21 recommendation is the Committee's Memorandum R&P-2.



1           Minority Report SF-4(A). The Clerk will read  
2 the report.

3           MR. QUILLEN: Minority Report No. SF-4(A)  
4 by Delegates Stern, Mentzer and Dukes of the Committee on  
5 State Finance & Taxation.

6           A MINORITY REPORT that general obligation bonds of  
7 the State be limited to a maturity of fifteen years; to  
8 this end that the words in brackets be deleted from the  
9 last sentence of Section 6.01.

10          THE PRESIDENT: Minority Report No. SF-4(A)  
11 will be received and distributed.

12          Resolution No. 21.

13          MR. QUILLEN: No. 21, by Committee on Rules,  
14 Credentials and Convention Budget, Alfred L. Scanlan,  
15 Chairman.

16          A RESOLUTION concerning charges for materials  
17 and services of the Convention.

18          THE PRESIDENT: Resolution No. 21 having  
19 been offered by the Committee on Rules, Credentials and  
20 Convention Budget is referred to the Committee on  
21 Calendar and Agenda.





1 Committee Report R&C 14.

2 MR. QUILLEN: Committee Report R&C 14 by the  
3 Committee on Rules, Credentials and Convention Budget,  
4 Alfred L. Scanlan, Chairman.

5 A REPORT regarding Resolution No. 21.

6 THE PRESIDENT: Committee Report No. R&C 14 is  
7 referred to the Committee on Calendar and Agenda.

8 The Chair requests that that committee report  
9 if possible be put on the agenda for this coming Monday.

10 Committee Recommendation No. GP-7.

11 MR. QUILLEN: Committee Recommendation No. GP-7  
12 by the Committee on General Provisions, Elroy G. Boyer,  
13 Chairman.

14 A RECOMMENDATION that the Constitution include  
15 a provision on amendment of the Constitution to read as  
16 follows: --

17 THE PRESIDENT: Committee Report No. R&C 14  
18 is referred to the Committee of the Whole. Accompanying  
19 it is Committee Memorandum GP-7.

20 Committee Recommendation GP-8.

21 MR. QUILLEN: Committee Recommendation No. GP-8



1 by Committee on General Provisions, Elroy G. Boyer,  
2 Chairman.

3 A RECOMMENDATION that the Constitution include  
4 a provision on constitutional convention to read as  
5 follows: --

6 THE PRESIDENT: The committee recommendation  
7 is referred to the Committee of the Whole.

8 There is a memorandum accompany ing it, GP-8.  
9 Committee Recommendation GP-9.

10 MR. QUILLEN: Committee Recommendation GP-9  
11 by the Committee on General Provisions, Elroy B. Boyer,  
12 Chairman.

13 A RECOMMENDATION that the Constitution contain  
14 the following provision dealing with the adoption by the State  
15 of the Common Law of England, such of the English statutes  
16 which are applicable to local circumstances, the Acts  
17 of Assembly which are appropriately enforceable and entitling  
18 the citizens of Maryland to all property derived by  
19 Charter from the King, to read as follows:

20 THE PRESIDENT: Committee Recommendation No.  
21 GP-9 is referred to the Committee of the Whole.



1                   There is accompanying it Committee Memorandum  
2 GP-9.

3                   Committee Recommendation No. GP-10.

4                   MR. QUILLEN: Committee Recommendation No. GP-10,  
5 by the Committee on General Provisions, Elroy G. Boyer,  
6 Chairman.

7                   A RECOMMENDATION that the Constitution include  
8 a provision on impeachment to read as follows:

9                   THE PRESIDENT: Committee Recommendation GP-10  
10 is referred to the Committee of the Whole.

11                   There is accompanying it Committee Memorandum  
12 GP-10.

13                   Committee Recommendation GP-11. The Clerk  
14 will read the recommendation.

15                   MR. QUILLEN: Committee Recommendation GP-11  
16 by the Committee on General Provisions, Elroy G. Boyer,  
17 Chairman.

18                   A RECOMMENDATION that the Constitution include  
19 a provision on separation of powers to read as follows:

20                   THE PRESIDENT: Committee Recommendation GP-11  
21 is referred to the Committee of the Whole.





1           Accompanying it is Committee Memorandum No. GP-11.  
2           Are there any further recommendations or reports, Mr.  
3           Clerk?

4           This oncludes the committee reports and recommenda-  
5           tions. Are there any motions or resolutions?

6           Delegate Bamberger?

7           DELEGATE BAMBERGER: Mr. President, I rise  
8           for a point of personal privilege.

9           THE PRESIDENT: State the privilege.

10          DELEGATE BAMBERGER: I would like to welcome  
11          to these halls a lady in the balcony who I think stepped  
12          out a minute, Mrs. Robert Martineau, who is a much more  
13          pleasing adornment of these halls than her husband, who  
14          is the Secretary of this Convention.

15          THE PRESIDENT: Delighted to have her. (Applause)  
16          Are there any announcements by Committee  
17          Chairmen?

18          Delegate Koss?

19          DELEGATE KOSS: The Committee on Suffrage and  
20          Elections will meet at 1:00 o'clock on Monday.

21          THE PRESIDENT: Delegate Penniman.



1 DELEGATE PENNIMAN: The Committee on Style will  
2 meet at 12:00 o'clock on Monday.

3 THE PRESIDENT: Delegate Gallagher.

4 DELEGATE GALLAGHER: Mr. President, if you  
5 will indicate what time you intend to have the full  
6 session back, I can make an announcement.

7 THE PRESIDENT: We intend to meet at 2:00  
8 o'clock on Monday, but there will be an evening session  
9 on Monday.

10 MR. GALLAGHER: Out of deference to the work of my  
11 fine committee, there will be no meeting Monday. (Applause)

12 THE PRESIDENT: Delegate Dulaney.

13 DELEGATE DULANEY: The Committee on Public  
14 Information will meet promptly at 1:00 o'clock on Monday.

15 THE PRESIDENT: Any further announcements by  
16 Committee Chairmen?

17 Any other announcements?

18 The Chair recognizes Delegate Powers.

19 DELEGATE POWERS: Mr. President, I have two  
20 brief announcements. One is that beginning next Tuesday  
21 and we hope for the remainder of the Convention, we



1 propose to recess for lunch a half hour later at 1:00  
2 o'clock until 2:30, thereby reducing a long afternoon  
3 by a half hour and lengthening a short morning by a  
4 half hour. I say that so that Delegates can make their  
5 plans accordingly.

6 Also, for the information of the Delegates  
7 the Committee Report of the Executive, Committee on the  
8 Executive Branch, No. 1, will be on the agenda for Monday  
9 and the Committee Recommendation will follow that so that  
10 you will have an idea as to what is in store for you between  
11 now and Thanksgiving.

12 I move that we adjourn --

13 THE PRESIDENT: Before you make the motion,  
14 are there any delegates here now who were not present  
15 at roll call this afternoon? You may indicate your presence  
16 on the roll call.

17 Delegate Powers, before you make your motion  
18 did you want to indicate anything as to the length of the  
19 session on Wednesday?

20 DELEGATE POWERS: On Wednesday the present  
21 plan would be that the session would be the same length





1 as the other weekdays but it may be between now and then  
2 I think between now and then perhaps we will provide  
3 an agenda that will enable the delegates to leave a little  
4 early on that day.

5 I move we adjourn until 2:00 p.m. on Monday

6 THE PRESIDENT: Before you leave and before I  
7 put the motion, let me repeat, in case you did not hear,  
8 we do plan a session Monday evening, so that the Monday  
9 session will be afternoon and evening, just as it was  
10 this past week.

11 All in favor of the motion, signify by saying  
12 Aye; contrary, no. The ayes have it. So ordered.

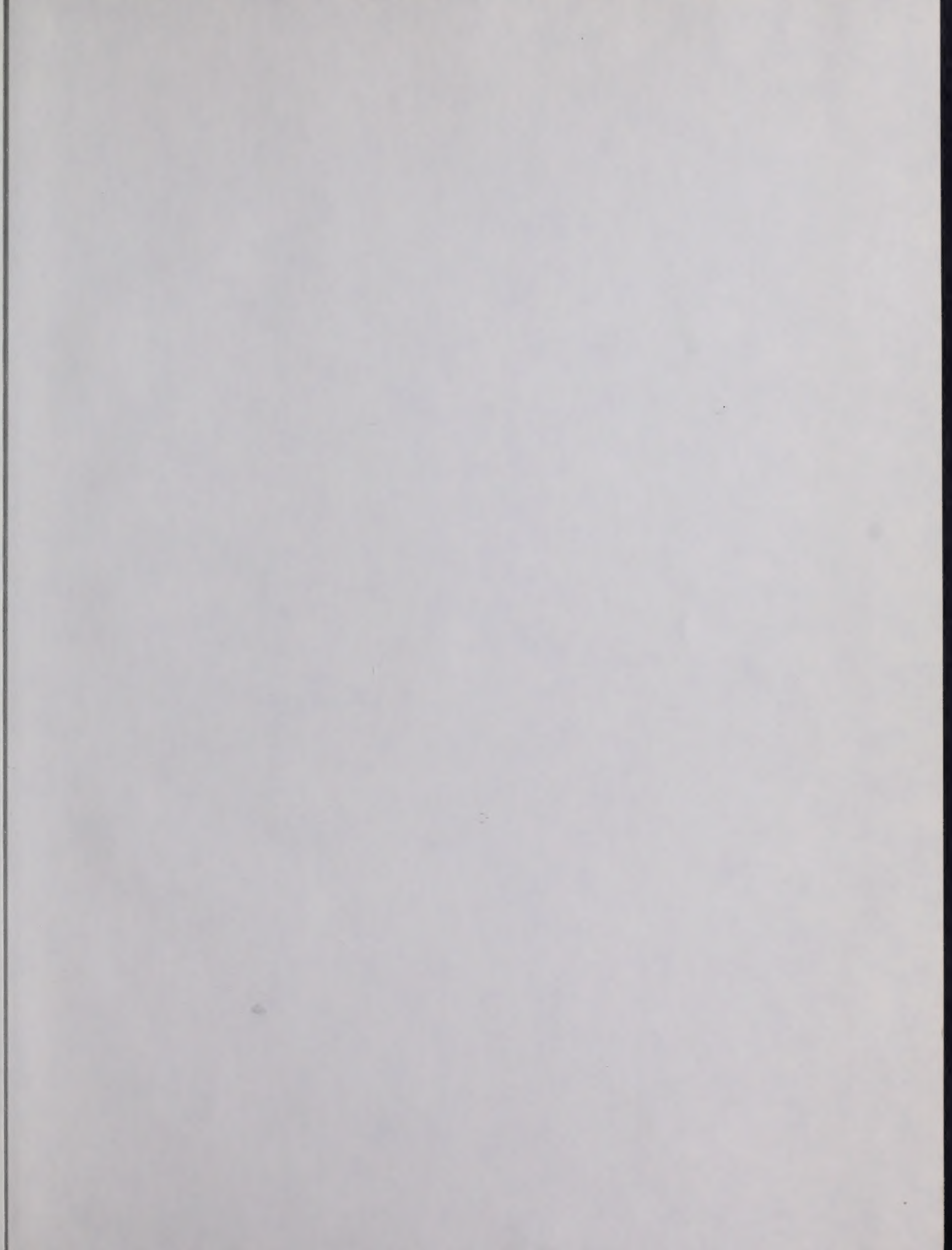
13 (Whereupon, at 5:25 o'clock p.m., the  
14 Convention was adjourned.)  
15  
16  
17  
18  
19  
20  
21

Manuscript Room  
University of Maryland Library  
College Park, Md.

Manuscript Room  
University of Maryland Library  
College Park, Md.



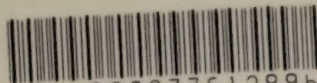








3 1430 02776128 9



a31430027761289b

UNIV. OF MD. COLLEGE PARK



